



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, वीरवार 24 जनवरी, 2013 / 4 माघ, 1934

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 14th January, 2013

No. Sharm (A) 7-1/2005 (Award) –Loose.— In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Dharamshala of the following cases on the website of Labour & Employment Department:—

Sr. No	Case No.	Title of the Case		Date of Award
1.	10/10	Smt./Shri Raghuvir Singh	M/D M/S Welson	3-10-2012
2.	198/10	Rajeev Gupta	D.C, Kangra	3-10-2012
3.	572/08	Suresh Kumar	B.D.O.	3-10-2012
3.	(a) 268/12	Rajinder Kumar	Prncipal Chief Con. of Forest.	4-10-2012

4.	2/07	Tej Pal	EE HPPWD Kullu.	5-10-2012
5.	44/12	Ravi Dass	HPPWD Dharmapur	8-10-2012
6.	54/12	Jai pal	HPPWD Dharampur	8-10-2012
7.	22/12	Leela Devi	HPPWD Dharampur	8-10-2012
8.	64/12	Ghambari Devi	HPPWD Dharampur	8-10-2012
9.	26/12	Chaudhary Ram	HPPWD Dharampur	8-10-2012
10.	53/12	Leela Devi	HPPWD Dharampur	8-10-2012
11.	12/12	Beena Devi	HPPWD Dharampur	8-10-2012
12.	197/12	Dharam Pal	HPPWD Dharampur	8-10-2012
13.	151/12	Ram Sai	HPPWD Dharampur	8-10-2012
14.	56/12	Kamlesh	HPPWD Dharampur	8-10-2012
15.	4/12	Shakuntla	HPPWD Dharampur	8-10-2012
16.	23/12	Sarla Devi	HPPWD Dharampur	8-10-2012
17.	104/208	Vijay Bhadur	Proj. Manager HCCL	10-10-2012
18.	123/08	Suprian Tirki	-do-	10-10-2012
19.	236/12	Mandan Lal	M/S. Puri Oil.	11-10-2012
20.	298/09	Ghanshyam	DFO Mandi	12-10-2012
21.	623/08	Bhim Dev	EE HPSEB	12-10-2012
22.	445/08	Sohan Lal	MD Hotel Le Grand	12-10-2012
23.	566/08	Harish	MD. HP State Corp.	12-10-2012
24.	350/08	Churamani	MD. AD Hydro	12-10-2012
25.	662/08	Sher Singh	EE HPSEB	12-10-2012
26.	445/09	Jyoti Parkesh	EE HPSEB	12-10-2012
27.	115/07	Gulab Singh	EE HPSEB	15-10-2012
28.	93/07	Vice President	HP State Civil Supply	15-10-2012
29.	106/11	Ramesh Chaudhary	Distt. Incharge Dainik Jagaran.	16-10-2012
30.	85/12	Vinod Kumar	SDM/Chairman Babaknath ji.	19-10-2012
31.	86/12	Sanjay Kumar	-do-	19-10-2012
32.	87/12	Raj Kumar	-do-	19-10-2012
33.	90/12	Rajinder Kumar	-do-	19-10-2012
34.	92/12	Lal Singh	-do-	19-10-2012
35.	93/12	Sanjay kumar	-do-	19-10-2012
36.	94/12	Surinder Kumar	-do-	19-10-2012
37.	95/12	Sanjay Kumar	-do-	19-10-2012
38.	68/09	Narain Dass	Incharge Potato Dev.	1-8-2012
39.	570/08	Mohinder	I&PH	1-11-2012
40.	185/10	Deep Kumar	-do-	1-11-2012
41.	418/09	Guddo	-do-	1-11-2012
42.	111/11	Jagdish	HPPWD	1-11-2012
43.	265/10	Surender	HPPWD	1-11-2012
44.	113/11	Surinder	-do-	1-11-2012
45.	278/10	G.S. HPN KS	GM Small Hydro	2-11-2012
46.	99/06	Prem Lata	CDPO Bilaspur	3-11-2012
47.	95/10	Jatinder Thakur	Kullu sadar fruit	6-11-2012
48.	92/10	Gian Chand	M/S Suraj Fabric	8-11-2012
49.	622/08	Ishwar Dass Chairamn	Ex. Serviceman	8-11-2012
50.	432/08	Gandhi Ram	HPPWD Mandi	19-11-2012
51.	363/09	Chhaje Ram	HPSEB Mandi	19-11-2012
52.	172/07	Jawahar Singh	M/S Chamunda Trader	19-11-2012
53.	503/09	Moti Ram	S.O. D/Shala	19-11-2012

54.	46/07	Naresh SE Largi	Const.	19-11-2012
55.	85/07	Subhash	-do-	19-11-2012
56.	593/08	Rajesh Kumar	HPPWD	26-11-2012
57.	594/08	Belu Devi	HPPWD	26-11-2012
58.	478/09	Muni Devi	DFO Lahaul	26-11-2012
59.	93/10	Ram Singh	HPSEB	26-11-2012
60.	219/10	Harbansh	HPSEB	26-11-2012
61.	126/11	Jasveer Kumar	Factory Manager Ranger	27-11-2012
62.	476/09	Kamla	Manager Sikand	1-12-2012
63.	124/08	Bir Bahadur	Project manager, HCCL, Chamba	1-12-2012
64.	188/08	Ramu Bhaskay	-do-	1-12-2012
65.	81/08	Chandur Bahadur	-do-	1-12-2012
66.	78/08	Dalip Kumar	-do-	1-12-2012
67.	170/05	Ashok Kumar	E.E. HPPWD, Nurpur	1-12-2012
68.	269/12	Kamal Dev M/S	Abir Refrastructure	5-12-2012
69.	35/11	Ramesh Chairman	Ex-serviceman	6-12-2012
70.	34/11	Manoj	-do-	6-12-2012
71.	258/10	Jasivender	G.M. Suraj Fabric	6-12-2012
72.	18/11	Tek Chand	HPPWD Killar	10-12-2012
73.	66/11	Mohar Singh	-do-	10-12-2012
74.	08/11	Moti Ram	-do-	10-11-2012
75.	31/11	Amar Singh	-do-	10-12-2012
76.	272/10	Kanshi Ram	D.F.O.,Sunder Nagar	10-12-2012
77.	273/10	Om Parkesh	-do-	10-12-2012
78.	274/10	Bhup Singh	-do-	10-12-2012
79.	280/09	Radha Devi	Pradhan Vill. Edu.	10-12-2012
80.	54/08	Kishan	Dy. Director Agriculture	11-12-2012
81.	455/09	Khub Ram	-do-	11-12-2012
82.	264/10	Bahadur Singh	HPSEB, Gohar	11-12-2012
83.	310/12	Sohan Lal	G.M. TRG Industry Pvt.Ltd.	1-12-2012
84.	323/12	Kanta Devi	EE.PPPWD J/Nagar	12-12-2012
85.	325/12	Nirmla Devi	-do-	12-12-2012
86.	327/12	Pawana Devi	-do-	12-12-2012
87.	362/12	Kishori Lal	DFO. Joginder Nagar	14-12-2012

By order,

Sd/-

*Addl. Chief Secretary,
(Labour & Employment .*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 12/2012

Date of Institution : 02.1.2012

Date of Decision : 08.10.2012

Smt. Beena Devi w/o Shri Ishwar Dass, r/o Village Banwar, P.O. Dharampur, Sub Tehsil
Dharampur, District Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Beena Devi w/o Shri Ishwar Dass, r/o Village Banwar, P.O. Dharampur, Sub Tehsil Dharampur, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent w.e.f. December, 1998. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on the muster roll w.e.f. December, 1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 14.6.2012, following issues were struck:—
 1. Whether the termination of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? ..OPP.
 2. Whether the reference is not maintainable in the present form? ..OPR.

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? ..OPR.
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
 5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? ..OPR.
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
- | | |
|------------|--|
| Issue No.1 | : Yes |
| Issue No.2 | : Not pressed |
| Issue No.3 | : No |
| Issue No.4 | : Not pressed. |
| Issue No.5 | : Not pressed. |
| Relief. | : Claim petition allowed in part
vide operative portion of the Award. |

REASONS FOR FINDINGS

Issue No.1

8. The petitioner Smt. Beena Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen. 11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008. 12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. December, 1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of reemployment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 623/2008
Date of Institution : 29.10.2008
Date of Decision : 12.10.2012

Shri Bhim Dev s/o Shri Barestu Ram, r/o VPO Tihari (Katoula), Tehsil Sadar, Distt. Mandi,
H.P. ..Petitioner.

Versus

The Executive Engineer, HPSEB, Division, Mandi, Distt. Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. Abhishek Lakhanpal, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Sh. Bhim Dev s/o Shri Barestu Ram, by the The Executive Engineer, HPSEB Division Mandi, Distt. Mandi, H.P. w.e.f. 01.9.2000 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on muster roll basis by the respondent in the month of August, 1998. He worked in Mangwain Section, Sub Division No.1, Mandi. He served the respondent/Board up-to 31.8.2000. During the period of his employment, the respondent used to give him the fictional breaks with a malafide intention so that he does not attain the status and privileges of a permanent workman. On 1st September, 2000, his services were terminated by the respondent by a verbal order. Neither any show cause notice was served upon him nor an inquiry was conducted against him. The termination order has been passed by the respondent arbitrarily and against the principles of natural justice so as to favour the junior workmen namely Smt. Uma Devi and others. No casual card was issued to him (petitioner) by the respondent. Even no seniority list of the workmen was supplied to him by the respondent. The latter has failed to adhere to the principle of ‘last come first go’. He has been victimized. From the date of his disengagement, he is not gainfully employed. The act and conduct of the respondent is illegal and unauthorized. It is also violative of the various provisions of the Industrial Disputes Act, 1947 (‘the Act’ for short).

As such, he (petitioner) prays that the termination order dated 01.9.2000 be upset. The respondent be directed to reinstate him in service with all consequential benefits, including the seniority, continuity and payment of back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioner has no locus standi to sue. The petition is time barred. The petitioner is estopped from filing the petition by his act and conduct. He has no cause of action.

On merits, it has not been specifically denied that the services of the petitioner were engaged as a daily waged beldar on the muster roll w.e.f. August, 1998. However, it has been disputed that the services of the petitioner were terminated on 01.9.2000 or artificial breaks were given to him during the course of his employment. Actually, the petitioner was in the habit of remaining absent from work. He left the job voluntarily. Neither the petitioner has been victimized nor any person junior to him has been retained in service. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he never left the job as alleged. Even he never absented from duty.

5. Per order dated 12.08.2010, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 01.9.2000 is violative of the principle of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so, to what effect the petitioner is entitled to? ..OPP.

2. Whether the petition is not maintainable as alleged. If so, to what effect? ..OPR.

3. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No.2 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

8. The petitioner Shri Bhim Dev stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he left the service willingly. He also denied that no person junior to him is serving the respondent and he has given a phoney statement.

9. Conversely, Shri Suresh Kumar Sen, Assistant Engineer, Electrical Sub Division No.II, Mandi testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by the respondent.

In the cross-examination, he admitted that the petitioner had joined the service as a daily wager in the month of August, 1998 and worked continuously up-to August, 2000. He also admitted that before the termination of the services of the petitioner no notice and retrenchment compensation were given to him. Self stated, the petitioner left the job of his own. No notice was served upon the petitioner regarding his absence from duty. Even no inquiry was conducted against him. He admitted that after September, 2000 (i.e. after the disengagement of the petitioner) new workmen namely Smt. Uma Devi etc. have been appointed by them. Volunteered, Smt. Uma Devi was employed in the year 1998-99. He cannot say as to whether any new/fresh hands were engaged or not after the termination of the petitioner. He admitted that seniority list of the workmen has not been produced by them. He denied that the petitioner approached them regularly for providing the work, but in vain.

10. Ex. PW1/B is the copy of the legal notice dated 7th September, 2002 served upon the respondent by the petitioner.

11. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

12. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of August, 1998. Shri Suresh Kumar Sen (RW1) in his cross-examination admitted that the petitioner served the respondent/Board continuously up-to the month of August, 2000. The version of the petitioner is that on 01.9.2000, his services were dispensed with by the respondent by a verbal order wrongly and illegally. While denying the said fact, the respondent has pleaded that the petitioner left the job of his own accord and free volition.

13. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be presumed that he has left/abandoned the job. It is there in the statement of RW1 that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the service. Absence from duty is serious misconduct. Admittedly no disciplinary proceedings were initiated against the petitioner for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

14. As already mentioned, Shri Suresh Kumar Sen (RW1) admitted in his cross-examination that the petitioner served as a daily wager regularly from August, 1998 to August, 2000. This indicates that the petitioner had worked for a period of more than 240 days in a block of 12 calendar months preceding the date of his termination as envisaged under Section 25-B of the Act.

15. Section 25-F of the Act postulates as under:—

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

16. There is not even an iota of evidence on the record to show that the mandatory provisions of the above noted Section were complied with by the respondent.

17. Shri Suresh Kumar Sen (RW1) stated during the cross-examination that one Smt. Uma Devi was appointed in the year 1998/1999. At the time of arguments, the Id. counsel for the respondent fairly conceded at bar that Smt. Uma Devi is/was junior to the petitioner and her services were not disengaged. This shows that the respondent has failed to adhere to the principle of 'first come last go'. His action contravenes the provisions of Section 25-G of the Act. The termination of the services of the petitioner by the respondent is wrong and illegal.

18. There is no cogent and convincing evidence on the record to show that after the termination of the services of the petitioner by the respondent, new/fresh hands have been engaged. The provisions of Section 25-H of the Act are not attracted in this case.

19. While testifying in the Court as PW1, the petitioner has given his age as 32 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For this reason, he is not entitled to the back wages.

20. This issue is answered accordingly.

ISSUE No.2

21. Not pressed.

RELIEF (ISSUE NO.3)

22. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 01.9.2000 except back wages. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 26/2012

Date of Institution : 02.01.2012

Date of Decision : 08.10.2012

Shri Chaudhary Ram s/o Shri Noopa Ram, r/o Village Naraingarh, P.O. Tanehar, Tehsil Sarkaghat, Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Chaudhary Ram s/o Sh. Noopa Ram, Village Naraingarh, P.O. Tanehar, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 01.01.1999. He worked as such up-to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his coworkers. The Chief Engineer being one of the interested parties and directly related with his (petitioner’s) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon’ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner’s) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner’s) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority-cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.01.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 13.6.2012, following issues were struck:—
 1. Whether the termination of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? ..OPP.
 2. Whether the reference is not maintainable in the present form? ..OPR.
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? ..OPR.
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
 5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1	: Yes
Issue No.2	: Not pressed
Issue No.3	: No
Issue No.4	: Not pressed.
Issue No.5	: Not pressed.
Relief.	: Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS***Issue No.1***

8. The petitioner Shri Chaudhary Ram stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

11. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

12. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

13. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

14. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

15. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.01.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

16. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

17. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

18. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2, 4 and 5

20. Not pressed.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

25. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 350/2008

Date of Institution : 13.6.2008

Date of Decision : 12.10.2012

Shri Chura Mani Thakur s/o Shri Chamar Thakur, r/o Village Dewli, P.O. Kotmoras, Tehsil Sadar, District Mandi, H.P. *..Petitioner.*

Versus

1. Chairman-cum-Managing Director, A.D. Hydro Power Limited, V.P.O. Prini, District Kullu, H.P.

2. Incharge, A.D. Hydro Power Limited, V.P.O. Prini (Manali), District Kullu, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondents : Sh. Anuj Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Chura Mani Thakur s/o Shri Chamar Thakur workman by the (1) Chairmancum-Managing Director, A.D. Hydro Power Limited, V.P.O. Prini, District Kullu, H.P. (2) Incharge, A.D. Hydro Power Limited, V.P.O. Prini (Manali), District Kullu, H.P. w.e.f. 21.12.2005 without giving charge sheet, inquiry and opportunity to explain his conduct without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was appointed as a Tractor Driver by the respondents per letter dated September 24, 2005 on payment of the consolidated monthly salary of Rs.3880/-. He continuously worked as such up-to 20.12.2005. His services were terminated w.e.f. 21st December, 2005 by Shri Rakesh Sharma, Personnel Officer of the respondents, vide letter No.8351 of even date. Before the termination of his services, neither any show cause notice was served upon him (petitioner) nor he was charge-sheeted. Even no inquiry was conducted against him. One month pay in lieu of the notice period and retrenchment compensation were also not paid to him. He was appointed by the H.O.D. of P&A Department. His services have been dispensed with by a non appointing authority. Shri Rakesh Sharma, the Personnel Officer of the company was not empowered to remove him from service. One Sh. Jeeva Nand has been retained in service by the respondents in violation of the principles of natural justice. The State Government has framed a policy to appoint 70% persons from Himachal Pradesh in any industry established in the State. Being a bonafide resident of the State of Himachal Pradesh and having the license to drive a light motor vehicle with more than 10 years of experience, he (petitioner) is entitled to the employment under the respondents. The respondents have their own Standing Orders. His services have been disengaged illegally and arbitrarily as well as in violation of the terms and conditions of the appointment as contained in the appointment letter. The respondents have also flouted various provisions of the Industrial Disputes Act, 1947 ('the Act' for short). From the date of his illegal termination, he is unemployed.

As such, he (petitioner) prays that the termination order dated 21.12.2005 be set aside. The respondents be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. Further, it has been prayed that the respondents be directed to pay him Rs.5000/- as litigation cost.

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the Chairman-cum-Managing Director (respondent No.1) is not looking after day to day affairs of A.D. Hydro Power Limited. As such, the reference against him (respondent No.1) is not maintainable and is bad in the eyes of law. The demand notice was issued by the petitioner only on 3rd March, 2006. This reflects that he was satisfied with respect to his discharge from service by the management. The demand notice was issued by the petitioner at a belated stage and the same is

after thought. The petition is not maintainable in the present form. The petitioner was appointed as a driver on fixed term contractual basis for the period 24.9.2005 to 23.9.2006. His services were terminated in accordance with the stipulation contained in the appointment letter vide letter dated 21st December, 2005. The contractual/fixed term period for which the services of the petitioner were engaged has already come to an end on 23.9.2006. For this reason also the reference/claim petition does not lie. The petitioner was appointed as a driver for one year per letter dated 24.9.2005. From the very beginning he was negligent and careless in performing his duties. On 20th October, 2005, at 4 P.M., an accident took place near 10000 RD on Allain site of the project due to the rash and negligent driving of the petitioner. The tractor of the company was badly damaged. The company had to incur huge expenditure for getting the damaged tractor repaired. The rash and negligent driving of the petitioner was not only harmful to the company, but to the public at large as well. After the accident, the management constituted three members committee to conduct an inquiry. The inquiry committee submitted its report dated 17.11.2005 relating to the accident. The inquiry committee held that the mishap resulted due to the rash and negligent driving of the petitioner. The report of the inquiry committee was forwarded to the project incharge. The latter decided to terminate the services of the petitioner by giving him one month's notice. Accordingly, the petitioner was called and informed verbally by Shri Shiv Kumar the then HOD (P&A) that his (petitioner's) services will be terminated after one month in terms of clause 4 of the appointment letter. The services of the petitioner were disengaged vide letter dated 21.12.2005 issued by the company in accordance with Section 2 (oo) (bb) of the Act. The work of the petitioner was not satisfactory.

On merits, it has been owned that the services of the petitioner were engaged as a driver on fixed term contractual basis per letter dated 24.9.2005 on payment of the monthly basic salary of Rs.1950/- plus other perks. The term of contractual appointment of the petitioner was from 24.9.2005 to 23.9.2006. The services of the petitioner have been terminated as an accident took place due to his rash and negligent driving causing loss to the company. Shri Rajesh Sharma was duly authorized and competent to terminate the services of the petitioner. It stands admitted that Shri Jeeva Nand is still working as a driver with the company. However, it has been disputed that the terms and conditions of the appointment of Shri Jeeva Nand were the same as that of the petitioner. The services of the petitioner have been rightly disengaged. Industrial Standing Orders are not applicable to them (respondents). The petitioner is gainfully employed.

In these circumstances, the respondents pray that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been owned that he (petitioner) was appointed as a driver on fixed term contractual basis from 24.9.2005 to 23.9.2006. No accident occurred due to his fault. He was not called by Shri Shiv Kumar HOD of P&A on 17th November, 2005 and verbally informed that his services will be terminated after one month. The fact that Shri Rakesh Sharma (Personnel Officer) was authorized to terminate the services of the petitioner has not been specifically disputed.

5. Per order dated 24.03.2009, following issues were struck by one of my ld. Predecessors:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP.
2. Whether the claim petition is not maintainable? . . .OPR.
3. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 And 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Chura Mani stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he used to ply a tractor. He denied that on 20.10.2005 in the evening an accident took place due to his rash and negligent driving causing damage to the tractor. He admitted that a report relating to the accident was made by Shri Ishwar Dass, Foreman. The appointment letter was issued in his name by Shri Shiv Kumar, HOD (P&A). He denied that after the accident Shri Shiv Kumar informed him that his services will be disengaged after one month. He admitted that after one month of the accident termination letter was served upon him by the respondents/company. He cannot say as to whether Shri Jiva Nand is serving as a tractor driver in the company or not? He admitted that the work at Allain site has already been completed and the power generation has started. He denied that the company suffered the loss due to his fault because of which his contractual engagement was terminated. Further, he denied that he has instituted a phoney petition.

10. Conversely, Shri Ramesh Kumar Khaitan, the power of attorney holder of the respondents, testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by the respondents. He also placed on the record Ex. RW1/B i.e. the copy of the power of attorney executed in his name by the Chairman and Director of the respondent company.

In the cross-examination, he admitted that Shri Rajesh Sharma, who signed the termination letter, was not the appointing authority of the petitioner. No show cause notice was served upon the petitioner regarding the accident. Even no inquiry was conducted against him.

11. Ex. PW1/B is the copy of the appointment letter dated September 24, 2005 issued in favour of the petitioner by the respondents. This letter was signed by Shri Shiv Kumar, HOD (P&A) on behalf of the respondents.

12. Ex. PW1/C is the wage fixation sheet pertaining to the petitioner.

13. Ex. PW1/D is the copy of the letter dated 21.12.2005 written by Shri Rakesh Sharma, Personnel Officer of the respondents, to the petitioner. As per this letter, the petitioner was removed from service w.e.f. the close of the day on 21st December, 2005 as his services were not found satisfactory.

14. Ex. PW1/E is the copy of the demand notice served upon the respondents by the petitioner.

15. Ex. PW1/F is the copy of the reply submitted by the respondents before the Conciliation-cum-Labour Officer, Mandi during the conciliation proceedings.

16. Ex. RW1/C is the copy of the joint damage report with respect to the damage caused to the tractor trolley in an accident dated 20.10.2005.

17. Ex. RW1/D is the report of the inquiry committee appointed by the respondents. It unfolds that it was recommended by the committee that the petitioner should be relieved of his duties after giving one month wages in lieu of the notice period or one month's notice. The petitioner was called on 17.11.2005 and advised not to perform the duty. One month's wages in lieu of the notice period were also ordered to be paid to him.

18. It is the admitted case of the parties that the services of the petitioner were engaged purely on contractual basis for a fixed term i.e. 24.9.2005 to 23.9.2006 per appointment letter dated 24.9.2005, the copy of which is Ex. PW1/B. In this letter, it has been specifically mentioned that the petitioner will automatically get relieved from duty on completion of the time bound contractual assignment. Condition No.4 of Ex. PW1/B postulates that the services of the petitioner were liable to be terminated without assigning any reason on one month's notice on either side or basic pay in lieu thereof.

19. It is not the case of the petitioner that one month basic pay in lieu of the notice period has not been given to him by the respondents at the time of the termination of his services.

20. It is an admitted fact that the services of the petitioner were terminated w.e.f. 21.12.2005 per letter Ex. PW1/D. The version of the petitioner is that Shri Rakesh Sharma (Personnel Officer) who signed the termination letter Ex. PW1/D, was not his appointing authority. The appointing authority was Shri Shiv Kumar, HOD (P&A). His (petitioner's) services have been dispensed with by a person who was not the appointing authority. For this reason, the termination of his services is bad in view of the observations made in Chhatrapal Singh Thakur vs. Assistant Commissioner of Coalmines Provident Fund and two others, 2001 LLR 687, (MP).

21. On the other hand, the respondents have maintained that the petitioner was duly called by the appointing authority namely Shri Shiv Kumar, HOD (P&A) and advised not to perform his duties. Shri Rakesh Sharma was simply asked to take necessary further action as per the recommendations of the committee. This assertion of the respondents appears to be true in view of the contents of the letter/inquiry report Ex. RW1/D. Otherwise also, if the services of the petitioner were wrongly and illegally terminated by a person who was not the appointing authority then why the petitioner accepted the payment of one month's wages in lieu of the notice period and that too without any protest? The reasons to that effect being obscure go to show that the petitioner is not telling the truth.

22. As already mentioned the respondents have maintained that the services of the petitioner were terminated before the expiry of the contractual period of appointment i.e. 24.9.2005 to 23.9.2006 since an accident took place due to his rash and negligent driving causing substantial loss to the company. Condition No.4 of the appointment letter Ex. PW1/B clearly lays down that the services of the petitioner can be terminated even without assigning any reason after giving one month's notice or basic pay in lieu thereof. Not only this, on the completion of the term of the contractual appointment, the petitioner was to get automatically relieved of his duties. Taking into account the catena of law laid down in (i) Mukhiya Karyapalak Adhikari, U.P. Khadi Tatha

Gramodyog Board Karmit Anubhag, Lucknow & Anr. Vs. Santosh Kumar, 2011 LLR 1235 (SC), (ii) M.D.Karnataka Handloom Dev. Corpn. Ltd. versus Sri Mahadeva Laxman Raval, 2007 STPL (LE) 37744 SC, (iii) The Saraswat Co-Op. Bank Limited vs. The Saraswat Co-Op. Bank Employees Union & Ors., 2011 LLR 1059 (Bombay) and (iv) Kishore Chandra Vs. D.M. Orissa State Cashew Devel. C. Ltd., 2005 STPL (LE) 35114 SC, by no stretch of imagination, it can be said that the petitioner has a legal or vested right to continue in service or his services have been illegally retrenched by the respondents.

23. Otherwise too, the period of contractual appointment of the petitioner came to an end on 23.9.2006. Due to this fact, the respondents cannot be directed to reinstate him in service. The petitioner (PW1) in his cross-examination admitted that the project work at Allain site has already been completed and the power generation has begun. Since the work has already been completed, the respondents cannot be directed to re-engage the petitioner. It is well known that the Award passed by this Court is to be executed as a decree of the Civil Court and no Court is required to pass a decree which is un-executable.

24. Such being the situation, I have no hesitation to conclude that the services of the petitioner have been rightly terminated by the respondents. The claim petition is not maintainable. The petitioner is not entitled to any relief. It appears to me that the avarice of the petitioner to grab the job and money has forced him to prefer a totally false and baseless claim.

25. These issues are decided against the petitioner and in favour of the respondents.

RELIEF (ISSUE NO. 3)

26. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/-

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 197/2012

Date of Institution : 03.03.2012

Date of Decision : 08.10.2012

Shri Dharam Pal s/o Shri Bachitar Singh, r/o VPO Brang, Tehsil Sarkaghat, Distt. Mandi,
H.P. ...Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Dharam Pal s/o Sh. Bachitar Singh, VPO Brang, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. January, 1998. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. January, 1998 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 14.6.2012, following issues were struck:—
 1. Whether the termination of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? . . .OPP.

2. Whether the reference is not maintainable in the present form? . .OPR.
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? . .OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . .OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Dharam Pal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the

petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. January, 1998 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of reemployment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 64/2012

Date of Institution : 06.01.2011

Date of Decision : 08.10.2012

Smt. Gambheri Devi w/o Shri Gusaun Ram, r/o Village Sher Pur, P.O. Binga, Tehsil
Sarkaghat, Distt. Mandi, H.P. . . .Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Gambheri Devi w/o Shri Gusaun Ram, r/o Village Sher Pur, P.O. Binga, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.07.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as daily rated beldar by the respondent on 23.3.2000. She worked as such up-to 07.7.2005. On 08.7.2005, her services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to her (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. She (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate her (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench her (petitioner) and her coworkers. The Chief Engineer being one of the interested parties and directly related with her (petitioner’s) employment did not provide proper opportunity of being heard to her (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench her (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon her (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon’ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in her (petitioner’s) retrenchment and the retrenchment of the other workmen. The notification dated

14.2.2005 was issued by the department solely with a view to terminate her (petitioner's) services. At the time of her disengagement sufficient work and funds were available with the respondent/department. She (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of her termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of her disengagement, she is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside
- ii. The permission granted by the specified authority-cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. She (petitioner) is estopped from filing the petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 23.3.2000 and she worked as such up-to 07.7.2005. She was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 13.6.2012, following issues were struck:—

1. Whether the termination of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? . . .OPP.
2. Whether the reference is not maintainable in the present form . . .OPR.

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? . . .OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . . .OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? . . .OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed.

Issue No.5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Gambheri Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that she worked as a daily waged beldar up-to July, 2005. She also admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that her services alongwith 1087 other workers were dispensed with by the respondent. She denied that no person junior to her has been retained in service by the respondent. She also denied that the claim put forth by her is false.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

11. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.
12. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.
13. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.
14. Ex. RW1/D is the copy of the notice dated 02.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating that her services shall stand terminated w.e.f. 08.7.2005.
15. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 23.3.2000 and she worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.
16. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.
17. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.
18. As already mentioned several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).
19. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2, 4 and 5

20. Not pressed.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.6)

25. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 298/2009

Date of Institution : 23.5.2009

Date of Decision : 12.10.2012

Shri Ghanshayam s/o Shri Deulu Ram, r/o Village Kheel, P.O. Dharmour, Tehsil Karsog,
District Mandi, H.P.

Versus

The Divisional Forest Officer, Working Plan Division Karsog at Sunder Nagar, District Mandi, H.P.

. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Vishal Thakur, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ghanshayam s/o Shri Deulu Ram by the Divisional Forest Officer, Working Plan Division Karsog at Sunder Nagar, District Mandi, H.P. during April, 2006, where as his junior Shri Tek Chand was kept in services without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in Karsog Range w.e.f. September, 2001. He served the respondent/department continuously up-to January, 2006. During the period of his employment, the respondent used to give him the fictional breaks. Artificial breaks were provided by the respondent intentionally so that he (petitioner) does not complete 240 days of work. His work and conduct was above board. No complaint was received against him. In the month of January, 2006, his services have been terminated by the respondent by passing a verbal order. At the time of his disengagement, the persons junior to him were retained in service by the respondent. The latter has failed to adhere to the principle of ‘last come first go’. Not only this, after his disengagement, new/fresh hands have been employed by the respondent. He was not given an opportunity of re-employment. His services were engaged for the work which is of permanent nature. The budget is also available with the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (‘the Act’ for short). He approached the respondent repeatedly for re-engagement, but in vain.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the reference/petition of the claimant/petitioner may kindly be allowed and the respondent be directed to re-engage the claimant/petitioner on the post and place, where he was serving prior to his termination. The respondents be further directed to consider the claimant/petitioner in the employment with all consequential benefits like seniority and arrears of salary etc. for the intervening period be also directed to be maintained and paid to the claimant/petitioner and/or any other relief, to which the claimant/petitioner be found entitled to in view of the facts and circumstances of the present case be also awarded to the claimant/petitioner against the respondent along with the costs of the present reference/petition, in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the

effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. He has misrepresented himself and is estopped from filing the petition by his act and conduct. The petitioner has not approached the Court with clean hands. He has suppressed the material facts from the Court.

On merits, it has been owned that the services of the petitioner were engaged as a daily paid beldar and the relationship of employer-employee exists between the parties. The petitioner worked intermittently from January, 2001 to February, 2006. His mandays chart is annexure R1. No artificial breaks were ever given to the petitioner as alleged. The services of the petitioner were not engaged for any permanent work. Actually, the petitioner was employed as a casual labourer in Karsog Working Plan Division at Sunder Nagar to carry out enumeration of trees in various forests of Karsog Forest Division. Working Plan Division is not a permanent establishment of the forest department. The said Division is of temporary nature and is wound up as and when the works relating to the Working Plan of the concerned Division are complete. After the completion of the work the permanent staff posted with Working Plan Division is posted in other establishments of the forest department. Now the work of Karsog Working Plan is complete. All the officers/officials have been posted in other Divisions/Establishments of the forest department. The services of the daily waged workers including the petitioner were not required by him (respondent) for the operation of the Working Plan. The petitioner did not complete 240 days of work in any year of his engagement. Since Working Plan Division is not a permanent establishment, it is not possible to engage the workers for the whole year. The labour is employed keeping in view the budget and the availability of the enumeration works. No person junior to the petitioner has been retained in service. Even no fresh candidate has been employed. The field operation of the Working Plan Division came to an end in the year 2006. After that no new worker/labourer was deployed for the working of the defunct Working Plan Division. The instant industrial dispute has been raised by the petitioner at a belated stage. The petitioner never approached him (respondent) for re-engagement. Otherwise too, the petitioner was employed for temporary work of the Working Plan. The service conditions were well within his knowledge. The petitioner was duly informed that his services have been engaged for seasonal and temporary nature of work. Muster roll was issued in the name of the petitioner only after he voluntarily consented to do the job of seasonal/temporary nature. The Working Plan Division has been closed in the year 2006 as its work was completed. The petitioner is gainfully employed as an agriculturist. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that he worked continuously up-to the month of January, 2006 from the date of his initial appointment. His services were engaged for the work of permanent nature. He has been discriminated.

5. Per order dated 08.9.2011, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. January, 2006 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . .OPP.
2. Whether the reference is not maintainable as alleged. If so, to what effect? . . .OPR.
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? . . .OPR.
4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1	: No. As per reference, the services of the petitioner were dispensed with in the month of April, 2006 and not January, 2006.
Issue No.2	: Yes
Issue No. 3	: Not pressed.
Relief.	: Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Ghanshayam Sharma stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were engaged in the Working Plan Division. He does not know that the work of the Working Plan Division is not of permanent nature. He denied that in the year 2001 when the muster roll was issued in his name, he and his companions were informed that their services have been engaged in the Working Plan Division, for the work which is of temporary nature. The work of Working Plan Division has come to an end. He denied that the daily wagers who were employed in the Working Plan Division, Karsog at Sunder Nagar were removed from service in the year 2006. Self stated, Shri Tek Chand who was junior to him is serving in the office of the Chief Conservator of Forests, Mandi. He admitted that no fictional breaks were ever provided to him by the respondent. He makes both the ends meet by doing the work of agriculture. He denied that he has given a phoney statement.

10. Conversely, Shri V.K. Aggarwal, Divisional Forest Officer, Karsog testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by the respondent.

In the cross-examination, he stated that the Working Plan Division was wound up in the year 2006 on the completion of its work. He denied that the petitioner had served for more than 240 days in each and every calendar year of his employment. The entire casual labour was disengaged on the closure of the work of the Working Plan Division. Only regular employees were adjusted against the vacant posts in different Divisions of the department. He does not know that Shri Tek Singh was appointed in Working Plan Division, Karsog at Sunder Nagar in the year 2002. He denied that the persons junior to the petitioner are working under him and he has deposed falsely.

11. Exts. PW1/B, C and RW1/B are the mandays charts relating to the petitioner.

12. Ex. PW1/D is the letter written by the PIO-Cum-DFO (Hqrs.) office of CCF. (W.P. & S.) H.P. at Mandi to the petitioner. It depicts that the petitioner had sought the information pertaining to the engagement of Shri Tek Singh s/o late Shri Niranjana Dass daily wager under the Right to Information Act, 2005. As per information supplied, Sh. Tek Singh was initially engaged

as a daily waged labourer in the office of Divisional Forest Officer, Working Plan Division, Karsog at Sunder Nagar w.e.f. 18.11.2002. Presently, the said person is working in the office of Chief Conservator of Forests (W.P.&S.) Mandi.

13. Mark-A corresponds to Ex. PW1/D.

14. Ex. PA is the letter written by Divisional Forest Officer (Working Plan) Karsog at Sunder Nagar regarding the regularization of the services of the petitioner. In this letter, it has been mentioned that the petitioner left the job of his own. As per the Government policy, his services cannot be regularized.

15. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference. Otherwise also, the petitioner (PW1) at the time of his cross-examination admitted that during the period of his engagement, no artificial breaks were given to him by his adversary.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily paid beldar in the month of Sept., 2001. In the statement of claim/demand and the rejoinder the petitioner has pleaded that he worked only upto the month of January, 2006. The respondent in his reply has maintained that during the period of his employment, the petitioner worked intermittently from the month of January, 2001 to February, 2006. The mandays charts Exts. PW1/B and RW1/B placed on the record by the parties clarify that the petitioner worked for only 31 days in the year 2006 up-to the month of February, 2006. Since the petitioner served the respondent/department only up-to the month of January/February, 2006, the question of the termination of his services in the month of April, 2006 (as per the reference) does not arise. As no retrenchment order was passed by the respondent in the month of April, 2006, it cannot be said that the services of the petitioner have been wrongly and illegally terminated by the respondent in the said month.

17. Section 10(4) of the Act makes it abundantly clear that the Labour Court/Tribunal shall confine its adjudication to the points referred to it and the matters incidental thereto. At the cost of reiteration, I will like to add that the petitioner was not removed from service by the respondent in the month of April, 2006. Therefore, the claim petition is not maintainable. The petitioner is not entitled to any relief.

18. These issue are decided against the petitioner and in favour of the respondent.

ISSUE No. 3

19. Not pressed.

RELIEF (ISSUE NO.4)

20. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition being not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
 COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 115/2007

Date of Institution : 12.9.2007

Date of Decision : 15.10.2012

Shri Gulab Singh s/o Shri Dhani Ram, r/o Village & P.O. Harbag, Tehsil Joginder Nagar, District Mandi, H.P., (now dead), through his legal representatives:

1. Shri Virender Kumar s/o late Shri Gulab Singh
2. Shri Rajender Kumar s/o late Shri Gulab Singh
3. Miss Reena Devi d/o late Shri Gulab Singh
4. Miss Meena Devi d/o late Shri Gulab Singh
5. Smt. Nago Devi w/o late Shri Gulab Singh
6. Smt. Purnu Devi mother of late Shri Gulab Singh.

..Petitioner(s).

Versus

Additional Superintending Engineer, H.P.S.E.B. Electrical Division, Joginder Nagar, District Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Sh. D.R. Sharma, Adv.

For the Respondent : Sh. Abhishek Lakhnpal, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Gulab Singh s/o Shri Dhani Ram workman by the Additional Superintending Engineer, H.P.S.E.B. Electrical Division, Joginder Nagar, District Mandi, H.P. w.e.f. 26.7.97 without complying the provisions of the Industrial Disputes Act, 1947 and clause 14(2) of the Certified Standing Orders of the Board, whereas junior to him are retained by the board is proper and justified? If not, what relief of service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the year 1994. He worked as

such up-to 25.7.1997. On the next day i.e. 26.7.1997, his services were terminated by the respondent without issuing any notice. Neither one month pay in lieu of the notice period nor the retrenchment compensation were paid to him. He had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. After his disengagement a demand notice was served upon the respondent by him. Copy of the demand notice was forwarded to the Labour – cum-Conciliation Officer, Mandi, who held the conciliatory proceedings, but in vain. He (petitioner) also instituted Original Application No. (M) 151/1999 before the erstwhile Hon'ble Himachal Pradesh State Administrative Tribunal for the redressal of his grievances. Such Original Application was returned by the Hon'ble Tribunal per order dated 26.02.2002 with the remarks that it has no jurisdiction to deal with the same. Different works are being executed by the respondent after his retrenchment. The persons junior to him namely Shri Jai Singh s/o Sh. Mangat Ram and Shri Balwant s/o Sh. Chint Ram have been retained in service by the respondent. Not only this, after his (petitioner's) retrenchment new/fresh hands were engaged by the respondent in the years 1998, 1999 and thereafter. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short) read with the Standing Orders issued by the respondent/Board.

As such, he (petitioner) prays that his termination be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the reference/claim petition is misconceived. The petitioner and his legal heirs have no cause of action and locus standi to sue.

On merits, it has been owned that the services of late Shri Gulab Singh were engaged as a daily wager w.e.f. 01.8.1994. He worked intermittently up-to 25.7.1997. Thereafter, the petitioner left the work of his own without any intimation to the department (respondent). The petitioner did not work for 240 days in any calendar year of his employment. No person junior to the petitioner has been retained in service. Even new/fresh hands have not been appointed after the alleged disengagement of the petitioner. Since the petitioner voluntarily left the services, he is not entitled to any protection under the Act. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he (petitioner) never left the job.

5. Per order dated 06.4.2011, following issues were struck by my Id. Predecessor:

1. Whether the services of the deceased Gulab Singh were disengaged by the respondents w.e.f. 26.7.1997 in contravention to the provisions of Sections 25-F and 25-G of the I.D. Act as alleged. If so to what relief the petitioner is entitled to? . . .OPP.

2. Whether the reference is not maintainable as alleged. If so to what effect? . . .OPR.

3. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:–

Issue No.1 : Partly Yes Partly No

Issue No.2 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

8. Smt. Nago Devi, the wife and one of the legal heirs of the deceased petitioner stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that her husband served intermittently from the year 1994 to 1997. She also denied that late Shri Gulab Singh did not complete 240 days of work in any year of his employment and he voluntarily left the job. Further, she denied that no person junior to the deceased petitioner has been retained in service by the respondent. She even refuted that the services of the deceased petitioner were engaged for specific work and she has given a phoney statement.

9. Conversely, Shri Suresh Kumar, Assistant Engineer, HPSEB Bassi Power House, Joginder Nagar testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by the respondent.

In the cross-examination, he admitted that late Shri Gulab Singh (petitioner) served in the Power House from the year 1994 to 1997. Self stated, the petitioner was only a casual labourer. He denied that the petitioner had worked for more than 240 days. He also denied that the services of the petitioner were terminated without issuing him any notice. Volunteered, the petitioner left the job willingly. He admitted that the mandays chart Ex. RW1/B produced by him is correct as per the record. Further, he admitted that Sh. Gulab Singh (petitioner) died during the pendency of the petition and Smt. Nago Devi (PW1) etc. are his natural/legal heirs.

10. There is nothing on the record to show that the services of the petitioner were engaged by the respondent as a casual labourer for some specific work. These facts have also not been pleaded by the respondent in his reply. Therefore, the evidence to that effect led by the respondent being beyond his pleadings cannot be read.

11. It is the admitted case of the respondent that the petitioner served under him from 01.8.1994 to 25.7.1997. The version of the petitioner is that on 26.7.1997, his services were terminated by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the petitioner left the job of his own accord and free volition.

12. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be presumed that he has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume his duties after he allegedly left the service. Absence from duty is serious misconduct. There is no evidence on the file to prove that some disciplinary proceedings were initiated against the petitioner by the respondent for his willful absence from duty as claimed. The plea of abandonment put forth by the respondent is not established.

13. The mandays chart Ex. RW1/B has not been disputed by the petitioner or his legal heirs. Its perusal discloses that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus, not attracted in this case.

14. At the time of the arguments, the ld. counsel for the respondent fairly conceded that the persons junior to the deceased petitioner are serving the respondent/department and their services have also been regularized. This indicates that the respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

15. As already mentioned Shri Gulab Singh (petitioner) has expired. Therefore, no orders with regard to his reinstatement in service can be passed. So far as the payment of back wages to the deceased petitioner is concerned, I will like to say that it has nowhere been pleaded that after his removal from service, late Shri Gulab Singh was unemployed. The petitioner(s) has/have failed to discharge the initial onus that during the period of his forced idleness Shri Gulab Singh (deceased petitioner) was not gainfully employed. For these reasons, he is not entitled to the back wages.

16. This issue has been answered accordingly.

ISSUE No.2

17. Not pressed.

RELIEF (ISSUE NO.3)

18. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner (late Shri Gulab Singh) is set aside and quashed. No orders regarding his re-engagement are being passed as he has already left the land of the dying. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 26.7.1997 except back wages. The respondent is also directed to consider the case of the deceased petitioner for the regularization of his services. If he is found entitled to the financial benefits, if any, the same shall be released in favour of his legal heirs within a period of 90 days from today. The legal representatives of late Shri Gulab Singh (petitioner) will be entitled to apportion the financial benefits in equal shares. Parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 566/2008

Date of Institution : 14.07.2008

Date of Decision : 12-10-2012

Shri Harish Kumar s/o Shri Moti Dhar, r/o VPO Pangna, Tehsil Karsog, Distt. Mandi, H.P. (now dead), through his legal representatives.

1. Smt. Geeta Devi w/o late Shri Harish Kumar
2. Smt. Sarla Devi mother of late Shri Harish Kumar
3. Manav (minor) s/o late Shri Harish Kumar, through his mother and natural guardian Smt. Geeta Devi. ..Petitioner(s).

Versus

1. The Managing Director, H.P. State Copo. Agriculture & Rural Development Bank Ltd. Shimla-171009.
2. The Branch Manager, H.P. State Copo. Agriculture & Rural Development Bank Ltd. Branch Sundernagar, Distt. Mandi, H.P. ..Respondent(s).

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Sh. Lalit Kumar, Adv.

For the Respondent(s) : Sh. Narinder Chandel, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Harish Kumar s/o Sh. Moti Ram by the 1) The Managing Director, H.P. State Copo. Agriculture & Rural Development Bank Ltd. Shimla 171009. 2) The Branch Manager, H.P. State Copo. Agriculture & Rural Development Bank Ltd. Branch Sundernagar, Distt. Mandi, H.P. w.e.f. 01.8.2003 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”

2. At the very outset, I will like to highlight that the petitioner/workman Shri Harish Kumar died on 31.10.2008 during the pendency of the reference before this Court. Accordingly, his legal heirs were brought on the record.

3. The case of the legal heirs of the deceased petitioner (as set out in the statement of claim/demand) is that the services of late Shri Harish Kumar (petitioner) were engaged as a daily waged worker by the respondents on 01.7.1999. He worked continuously as such up-to the month of July, 2003. On 1st August, 2003, his services were terminated by the respondents in violation of the principles of law. The deceased had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his retrenchment. At the time of the termination of the services of the deceased petitioner, the persons junior to him were retained in service by the respondents. Not only this, after the retrenchment of

the deceased petitioner, new/fresh hands were engaged by the respondents. He was not given an opportunity of re-employment. Late Shri Harish Kumar during his life time served a demand notice dated 20.4.2006 upon the respondents. The copy of the demand notice was forwarded to the Labour-cum-Conciliation Officer, Mandi, but in vain. The act and conduct of the respondents is illegal and unjustified. It also contravenes the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short).

As such, as is apparent from the prayer clause of the statement of claim/demand, the petitioners have claimed the following relief(s) in this case:—

“the reference/petition of the claimant/petitioners may kindly be allowed and the respondents be directed to consider the deceased employee Harish Kumar, predecessor-in-interest of the claimant/petitioners in the employment from his illegal termination till his death with all consequential benefits like seniority and arrears of salary etc. and to release all such financial benefits to the claimants/petitioners and they be further directed to give the job service on compassionate grounds to one of his family member and /or any other relief, to which the claimant/petitioners be found entitled to in view of the facts and circumstances of the present case be also awarded to the claimant/applicant against the respondents along with the costs of the present reference/petition, in the interest of justice and justice be done”.

4. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioners have no locus standi to sue.

On merits, it has been owned that the relationship of employer and employee existed between them and Shri Harish Kumar (deceased petitioner). However, it has been pleaded that Shri Harish Kumar was not engaged as a daily wager. His services were engaged on contingent basis subject to the availability of the funds against the specific work. As and when the funds were exhausted the deceased was not allowed to work. Now no work is available with them (respondents) for the engagement of the deceased petitioner or his heirs. Late Shri Harish Kumar did not complete 240 days of work as claimed. No person junior to him has been retained in service. Even no new/fresh hands have been engaged after the termination of the services of the deceased petitioner. No provision of the Act has been infringed. The petitioner(s) is/are not entitled to any relief. They (respondents) have been dragged into the unwarranted litigation.

In these circumstances, the respondents pray that the reference/petition in hand be dismissed with costs.

5. In the rejoinder, the petitioners have reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been disputed that the services of the deceased petitioner were engaged as a contingent paid worker for some specific work.

6. Vide order dated 29.10.2010, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 01.8.2003 is in violation of the provisions of Sections 25-F & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . .OPP.
2. Whether the claim is hit by the vice of delay and laches as alleged. If so, to what effect? . . .OPR.

3. Relief.
7. I have heard the ld. counsel/AR for the parties and have gone through the case file.
8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Partly Yes Partly No

Issue No.2 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

9. Smt. Geeta Devi, the wife and one of the legal representatives of the deceased petitioner stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she stated that her late husband served the respondents from the year 1999 to 2003. She denied that late Shri Harish Kumar was not appointed as a daily wager. She does not know that the services of the deceased petitioner were to continue subject to the availability of the funds. She cannot say as to whether any person junior to the deceased petitioner has been allowed to work by the respondents or not after the termination of the services of her husband. She denied that a phoney petition has been instituted by them to grab the Government job and money.

10. Ex. PW1/B is the copy of the death certificate of Shri Harish Kumar (petitioner). It depicts that he breathed his last on 31.10.2008.

11. Ex. PW1/C is the copy of the legal heirs' certificate issued by the Executive Magistrate, Karsog, Distt. Mandi (HP) in favour of the petitioners.

12. No evidence has been adduced by the respondents in support of their version.

13. It is the admitted case of the parties that the services of late Shri Harish Kumar (petitioner) were engaged by the respondents on 01.7.1999 and he continuously worked up-to 31st July, 2003. The version of the petitioners is that late Shri Harish Kumar was appointed as a daily wager by the respondents. The said fact has been denied by the latter. Their plea is that the services of Shri Harish Kumar were engaged as a contingent paid worker for specific work subject to the availability of the funds. As already mentioned, no evidence in this respect has been led by the respondents. Therefore, it can be safely said that late Shri Harish Kumar (petitioner) was appointed as a daily wager by the respondents.

14. In her examination-in-chief, PW1 categorically stated that her deceased husband had worked for 240 days in all the years of his employment as well as in a block of 12 calendar months preceding the date of his termination i.e. 01.8.2003. The said fact has not been challenged during the cross-examination by the respondents. It is the basic law that if a fact goes un-rebutted and unchallenged during the cross-examination, the same is to be taken as admitted by the other side. That being so, it can be safely said that the deceased petitioner had worked for 240 days in a block of 12 calendar months anterior to the date of his termination as envisaged under Section 25-B of the Act.

15. Section 25-F of the Act postulates as under:—

“25-F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

16. There is not even an iota of evidence on the file to establish that the mandatory provisions of the above quoted Section were complied with by the respondents. For this reason, the termination of the services of the deceased petitioner is wrong and illegal.

17. The petitioners have not disclosed the name of any person whose services were engaged by the respondents after the disengagement of the services of late Shri Harish Kumar (petitioner). Thus, the provisions of Section 25-H of the Act are not attracted in this case.

18. This issue has been answered accordingly.

ISSUE NO. 2

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed.

21. It is not the case of the petitioners that after his removal from service late Shri Harish Kumar was not gainfully employed. Therefore, he is not entitled to the back wages. The orders of reinstatement in service cannot be passed since the workman has already expired. So far as, the appointment of any of the legal heirs of the deceased petitioner on compassionate grounds is concerned, I will like to say that such appointments cannot be ordered by this Court as the same are regulated by the policies framed by the State Government from time to time.

22. This issue is decided in favour of the petitioners and against the respondents.

RELIEF (ISSUE NO. 3)

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner (late Shri Harish Kumar) is set aside and quashed. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 01.8.2003 except back wages. The respondents are also directed to consider the case of the claimants/petitioners for employment on compassionate grounds as per the rules as and when an application in this regard is moved by them (petitioners/claimants). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 54/2012

Date of Institution : 06.01.2012

Date of Decision : 08.10.2012

Shri Jai Pal s/o Shri Dhuma Ram, r/o Village Upper Beri, P.O. Kothwan, Tehsil Sarkaghat,
Distt. Mandi, H.P.

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Jai Pal s/o Sh. Dhuma Ram, Village Upper Beri, P.O. Kothwan, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 12.6.1999. He worked as such up to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his coworkers. The Chief Engineer being one of the interested parties and directly related with his (petitioner’s) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon’ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner’s) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner’s) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- “i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority-cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment

of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.

- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 12.6.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 13.6.2012, following issues were struck:—

1. Whether the termination of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? . . .OPP.
2. Whether the reference is not maintainable in the present form? . . .OPR.
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? . . .OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . . .OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . .OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed.

Issue No.5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Jai Pal stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

11. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

12. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

13. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

14. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

15. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 12.6.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

16. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

17. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

18. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2, 4 and 5

20. Not pressed.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

25. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 445/2009

Date of Institution : 28.8.2009

Date of Decision : 12.10.2012

Shri Jyoti Prakash s/o Shri Roop Ram, r/o Village Tinder, P.O. Jaon, Tehsil Nirmand, Distt. Kullu, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPSEB, Division, Anni, Distt. Kullu, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Lalit Kumar Adv.

For the Respondent : Sh. Abhishek Lakhanpal, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Jyoti Prakash s/o Sh. Roop Ram, by The Executive Engineer, HPSEB Division, Anni, Distt Kullu, H.P. without any notice and compensation is proper and justified? If not, what relief of service benefits the above workers is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged as a daily waged beldar by the respondent in the year 1993. He worked in Sub Section Bagipul, HPSEB Sub Division Nirmand, District Kullu. He was performing his duties regularly. During the period of his employment certain artificial breaks were given to him by the respondent despite the fact that he was ready and willing to work. Fictional breaks were given so as to deprive him (petitioner) from completing 240 days of work. His services were terminated by the respondent verbally w.e.f. 31.12.1998 in an illegal manner and without adhering to the provisions of the Industrial Disputes Act, 1947 ('the Act' for short) as well as Industrial Standing Orders, 1948. The wrongful termination was challenged by him by instituting Original Application No. 2698/1999 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal. In the said Original Application the respondent filed the reply and took the plea that his (petitioner's) services were engaged against the specific work. The reply preferred by the respondent/Board was rejected by the Hon'ble Administrative Tribunal per order dated 14.12.2001. The verbal termination was set aside by the Hon'ble Administrative Tribunal. The respondent was directed to re-engage him (petitioner). The period of disengagement from the date of termination to the date of re-engagement was ordered to be counted for the purpose of seniority. In obedience to the orders passed by the Hon'ble Administrative Tribunal, his (petitioner's) services were re-engaged by the respondent during the month of January, 2002. The respondent/Board thereafter instituted Civil Writ Petition No.819/2002 before the Hon'ble High Court of Himachal Pradesh. The Civil Writ Petition was allowed by the Hon'ble High Court. The judgment/order pronounced by the Hon'ble High Court was misinterpreted by the respondent and his (petitioner's) services were once again wrongly terminated w.e.f. 10.9.2007. He served the respondent/Board for more than nine years. Before the termination of his services, neither any notice was served upon him nor the retrenchment compensation was paid. The act and conduct of the respondent is illegal and unjustified. It is also violative of Section 25-F of the Act.

As such, he (petitioner) prays that his retrenchment be upset. The respondent be directed to reinstate him in service with all consequential benefits including seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the Himachal Pradesh State Electricity Board is a body corporate constituted under the statute having perpetual successions and common seal. It can acquire and hold both movable and immovable property. The Himachal Pradesh State Electricity Board can sue and be sued in its name. He (respondent) is merely a functionary of the Himachal Pradesh State Electricity Board. The claim petition is bad for non-joinder of the necessary parties and mis-joinder of the parties. The petition is time barred and not maintainable in the present form. The claim petition is misconceived. The petitioner has no cause of action. He has not approached the Court with clean hands and has suppressed the material facts from the Court.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar w.e.f. 26.12.1993 and he worked as such up-to 24.11.1998. The petitioner served for

only 67 days during the course of his employment. No artificial breaks were ever given to him. The services of the petitioner were not terminated w.e.f. 31.12.1998 as alleged. Industrial Employment Standing Order Act, 1946 is not applicable to the Board. It stands admitted that the petitioner had instituted an Original Application before the Hon'ble Administrative Tribunal and his services were re-engaged. As a goodwill gesture, he (respondent) did his best to retain the petitioner in service. The petitioner due to his adamant attitude refused to adhere to the advise given by him (respondent). The services of the petitioner have been disengaged on the strength of the orders passed by the Hon'ble High Court of Himachal Pradesh. Before the termination of the services of the petitioner due notice was given to him. No provision of the Act has been infringed. The petitioner is estopped from filing the petition by his act and conduct. He is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the mandays chart produced by the respondent is incorrect. His services have been terminated in a wrongful manner. He had completed more than 240 days of work in every calendar year for a period of three years preceding the date of his retrenchment.

5. Per order dated 13.08.2010, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 10.9.2007 is violative of the provisions of Sections 25-F, of the I.D. Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable as alleged. If so, to what effect? . . . OPR.
3. Whether the claim is barred by delay and laches as alleged. If so its effect? . . . OPR.
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Jyoti Prakash stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that his services have been rightly terminated as per the order of the Hon'ble High Court. He also denied that he has given a phoney statement.

9. Conversely, Shri Gurdev Ram, Assistant Engineer, HPSEB, Anni testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he admitted that the Hon'ble Administrative Tribunal had directed to re-engage the services of the petitioner. He denied that the judgment/order pronounced by the Hon'ble High Court has been misinterpreted by them and the services of the petitioner have been terminated in an illegal manner. Further, he denied that the artificial breaks used to be given to the petitioner.

10. Ex. RW1/B is the mandays chart relating to the petitioner.

11. Mark-A is the copy of the notification dated 10th October, 1983 issued by the Labour Department, Government of Himachal Pradesh.

12. Mark-B is the copy of a letter dated 10.7.2007 written by the respondent to the Secretary of the Himachal Pradesh State Electricity Board.

13. No reference has been received from the appropriate Government regarding providing the fictional breaks (as alleged) to the petitioner by the respondent. Even no reference has been received from the appropriate Government regarding the termination of the services of the petitioner w.e.f. 31.12.1998. Therefore, these controversies between the parties cannot be looked into by this Court being beyond the terms of the reference. The only matter in dispute relates to the termination of the services of the petitioner by the respondent w.e.f. 10.9.2007.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar on 26.12.1993 and he worked intermittently up-to 24.11.1998. It is also an admitted fact that as per the orders pronounced by the Hon'ble Administrative Tribunal in O.A. No. 2698/1999, the services of the petitioner were re-engaged and he worked up-to 10.9.2007.

15. The version of the petitioner is that on 10.9.2007, his services were dispensed with by the respondent wrongly and illegally. While denying the said fact, the respondent has maintained that the petitioner was removed from service as per the judgment/order dated April 13, 2007 rendered by the Hon'ble High Court of Himachal Pradesh in CWP No.819/2002 titled as Himachal Pradesh State Electricity Board and another vs. Jyoti Prakash.

16. Admittedly, Original Application No.2698/1999 preferred by the applicant/petitioner was allowed by the Hon'ble Administrative Tribunal per judgment dated December 14, 2001. The termination of the petitioner w.e.f. December 31, 1998 was set aside. The respondent was directed to re-engage the petitioner. The period of absence between disengagement and re-engagement was ordered to be counted towards the seniority. However, the petitioner was denied the back wages. Against the order/judgment dated 14.12.2001 passed by the Hon'ble Administrative Tribunal, Himachal Pradesh State Electricity Board and the respondent preferred CWP No.819/2002 before the Hon'ble High Court of Himachal Pradesh. The CWP was decided by the Hon'ble High Court per order dated April 13, 2007 which reads thus:-

“Present: Mr. Shrawan Dogra, counsel for the petitioners.

Mr. Mohan Singh Verma vice Mr. Vishal Panwar, counsel for the respondent.

In view of the judgment of the Division Bench of this Court in H.P. Agro Industries Corporation Ltd. and others Vs. Raj Kumar and another, 2002 (3) Shiml. L.C. 423, the Tribunal had not jurisdiction to adjudicate upon the matter and the petitioner was required to approach the Labour Court for redressal of his grievances. The petitioner may raise the industrial disputes before the Labour Court within the provisions of the Act within a period of two months for appropriate remedy. The petition is allowed accordingly and the order of the Tribunal is set aside”.

17. It was nowhere held or directed by the Hon'ble High Court that the services of the petitioner should be disengaged. It was simply held by the Hon'ble High Court that the Hon'ble Administrative Tribunal had no jurisdiction to decide the matter and the petitioner is/was required to approach the Labour Court for the redressal of his grievances.

18. After the pronouncement of the order dated April 13, 2007 by the Hon'ble High Court, the services of the petitioner were terminated by the respondent w.e.f. 10.9.2007. The petitioner has been removed from service by the respondent by taking shelter of the order dated 13.4.2007. As already mentioned, the Hon'ble High Court nowhere directed the respondent to terminate the services of the petitioner.

19. The mandays chart Ex. RW1/B unfolds that the petitioner had worked for more than 240 days in a block of 12 calendar months preceding the date of his termination as envisaged under Section 25-B of the Act.

20. Section 25-F of the Act postulates as under:-

“25-F. Conditions precedent to retrenchment of workmen.-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. There is not even an iota of evidence on the record to show that the mandatory provisions of the above quoted Section were complied with by the respondent. Even if, the petitioner served as per the order/judgment dated 14.12.2001 pronounced by the Hon'ble Administrative Tribunal in O.A. No.2698/1999 (which was subsequently set aside), the same will not come to the rescue of the respondent for the reasons that the relationship of employer and employee existed between the parties and the petitioner had worked for more than 240 days.

22. Such being the situation, I have no hesitation to conclude that the services of the petitioner have been terminated by the respondent wrongly and illegally.

23. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

24. Not pressed.

Issue No. 3

25. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

26. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

27. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

28. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 4)

29. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 10.9.2007 except back wages. Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 56/2012

Date of Institution : 06.01.2012

Date of Decision : 08.10.2012

Shri Kamlesh Kumar s/o Shri Chand Ram, r/o Village Tela, P.O. Cholthra, Tehsil Sarkaghat, Distt. Mandi, H.P. . . . Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Kamlesh Kumar s/o Shri Chand Ram, r/o Village Tela, P.O. Cholthra, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, service benefits and compensation the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 1st January, 1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 1st January, 1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 21.7.2012, following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? . . . OPP.

2. Whether the reference is not maintainable in the present form? . . OPR.
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? . . OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . . OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Issue No. 4 : Not pressed.
 Issue No. 5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Kamlesh Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wagger no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 1st January, 1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of reemployment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

18. Not pressed.

Issue No. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs. 50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 22/2012

Date of Institution : 02.1.2012

Date of Decision : 08.10.2012

Smt. Leela Devi w/o Shri Budhi Singh, r/o Village and P.O. Sakalana, Tehsil Sarkaghat,
District Mandi, H.P. . . . Petitioner.

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat,
District Mandi, H.P. . . Respondent.

For the Petitioner : Sh. N. L. Kaundal, AR
:
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D. A.

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent w.e.f. December, 1998. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs. 5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. December, 1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 14.6.2012, following issues were struck:-
 1. Whether the termination of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? . . .OPP.

2. Whether the reference is not maintainable in the present form? . . OPR.
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? . . OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . . OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? . . OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Issue No. 4 : Not pressed.
 Issue No. 5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Smt. Leela Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the

petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. December, 1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of reemployment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

18. Not pressed.

Issue No. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 53/2012

Date of Institution : 06.1.2012

Date of Decision : 08.10.2012

Smt. Leela Devi w/o Shri Bhoop Singh, r/o Village and P.O. Baroti, Tehsil Sarkaghat,
District Mandi, H.P. . . . Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D. A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Leela Devi w/o Shri Bhoop Singh, r/o Village and P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent in the year 1999. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily wagedbeldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1999 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to thenon-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 13.6.2012, following issues were struck:-
 1. Whether the termination of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? . . . OPP.

2. Whether the reference is not maintainable in the present form? . . OPR.
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? . . OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . . OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? . . OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Issue No. 4 : Not pressed.
 Issue No. 5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Smt. Leela Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-

engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1999 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of reemployment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

18. Not pressed.

Issue No. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 68/2009

Date of Institution : 26.2.2009

Date of Decision : 15.10.2012

Shri Narain Dass s/o late Shri Khimi Ram, r/o Village Shagan, P.O. Chowai, Tehsil Ani,
Distt. Kullu, H.P. . . . Petitioner.

Versus

The Incharge, Potato Development Centre, Khunaha, Chowai, Tehsil Ani, Distt. Kullu, H.P.
. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B. C. Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D. A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Narain Dass s/o late Sh. Khimi Ram w.e.f. 17.11.2005 by the The Incharge, Potato Development Centre, Khunaha, Chowai, Tehsil Ani, Distt. Kullu, H.P. and retaining the junior worker is legal and justified? If not, what relief of service benefits including compensation and seniority the above workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the month of October, 1995 after completing all the codal formalities. He was deputed in Potato Development Centre, Khunaha Chowai, Tehsil Ani, District Kullu, H.P. He worked uninterruptedly from the date of his employment and completed 240 days of work in each and every calendar year of his engagement. Surprisingly, when he was expecting that his services will be regularized by the respondent in the year 2003, per office orders dated 10/18th July, 2003, he was removed from service. He was compelled to assail the order of termination. He instituted Original Application No.2026/2003 before the erstwhile Hon’ble Himachal Pradesh State Administrative Tribunal. During the pendency of the Original Application, per office order dated 08.9.2003, the respondent reviewed his earlier retrenchment order dated 25.7.2003 and he (petitioner) was reengaged in the public interest. Thereafter, per order dated 17.11.2005, his services were once again terminated by the respondent. He worked continuously from the date of his re-engagement till the date of termination. The retrenchment order dated 17.11.2005 has been passed by the respondent wrongly and arbitrarily. At the time of the termination of his services the person junior to him namely Shri Dalip Singh was retained in service by the respondent/department. The latter has failed to adhere to the principle of ‘last come first go’. Not only this, after his disengagement, a new person namely Ms. Rajni Kumari has been appointed as a daily wager by the respondent. He was not given an opportunity of reemployment. The respondent has taken different stands at intervals. In the year 2003, his (petitioner’s) services were ordered to be dispensed with on the ground that he has been appointed in utter violation of the instructions issued by the department. Now in the year 2005, his services have been disengaged on the pretext that the funds are not available. He had worked continuously for more than eight years and completed 240 days of work in each and every calendar year of his employment. His services are required to be regularized as per the law laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. The persons who were similarly situated and engaged alongwith him (petitioner) in the year 1995 have already been regularized by the respondent/department. He has been thrown out of the job despite the facts that the work is available and the posts are lying vacant. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) That the action of the respondents whereby the services of the applicant-petitioner has been illegally terminated vide its order dated 17.11.2005 may kindly be set-aside and quashed and the respondents may kindly be directed to re-engage the petitioner with all back wages and all consequential benefits.
- (ii) That after setting aside the illegal termination of the petitioner-applicant, the respondents may kindly be directed to extend the benefit of Mool Raj Upadhaya’s judgment to the petitioner and his services may be ordered to be regularized with all consequential benefits.
- (iii) Any other order which this Hon’ble Court may deem fit may also kindly be passed in favour of the applicant and against the respondents in the interest of justice and fair play”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The same is bad on account of delay and laches on the part of the petitioner.

On merits, it has been denied that the services of the petitioner were engaged as a daily wager after completing all the legal formalities. As per the mandays chart annexure-A, the petitioner remained a daily paid labourer from the year 1995 to 2005. He was deployed in Potato Development Station, Khunaha at Chowai. The services of the petitioner were originally engaged in violation of the government policy. For this reason, the services of the petitioner were dispensed with on 25.7.2003. After the retrenchment, the petitioner approached the Hon’ble Administrative Tribunal and preferred O.A. No.2066/2003. When the Original Application was pending it was noticed by the Dy. Director of Agriculture, Kullu that the services of the petitioner have been retrenched in violation of Section 25-F of the Act. Therefore, vide order dated 08.9.2003, the Dy. Director of Agriculture, Kullu ordered the re-engagement of the petitioner. After the re-engagement, the Original Application instituted by the petitioner was dismissed by the Hon’ble Administrative Tribunal as infructuous. The engagement of the petitioner was in violation of the government policy. It was difficult for him (respondent) to continue with the services of the petitioner on account of the paucity of the funds and the work. The department has placed the services of two regular beldars at his (respondent’s) disposal to look after the day to day activity of the farm. For these reasons, he (respondent) had no option but to terminate the services of the petitioner w.e.f. 21.11.2005 in accordance with the provisions of the Act. Notice dated 17.11.2005 under Section 25-F of the Act was issued to the petitioner. One month pay in lieu of the notice period amounting to Rs.2100/- and the retrenchment compensation amounting to Rs.12600/- were remitted to the petitioner vide a demand draft firstly through the registered post and thereafter a special messenger. The petitioner refused to accept the money/draft because of which the same was deposited by him (respondent) in the shape of a Fixed Deposit Receipt. One month wages and retrenchment compensation are lying deposited safely. Regular interest is accruing on the same to which the petitioner is entitled. He (petitioner) refused to receive the above noted amount. He is delaying the matter unnecessarily. No person named as Shri Dalip Singh has been ever engaged or retained in service by him (respondent). So far as Ms. Rajni Kumari is concerned, her appointment is on account of the recommendation of the special selection committee constituted by the government for the selection of all categories of persons with disabilities (visually impaired, hearing impaired and loco motor impaired). The petitioner is precluded from claiming parity with Ms. Rajni Kumari whose services have been engaged in a different category. Since the services of the petitioner were disengaged as per law, the question of the regularization of his services does not arise. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been disputed that his services were initially engaged in violation of the government policy. There is no shortage of the budget and the work. He is/was entitled to the regularization before the retrenchment as per the trite laid down in Mool Raj Upadhaya's case. Shri Dalip Singh has been working in District Mandi. His services have already been regularized. He (petitioner) has a preferential right of appointment vis-à-vis Ms. Rajni Kumari.

5. Per order dated 06.04.2011, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 21.11.2005 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the reference is not maintainable as alleged. If so, to what effect?. . . OPR.
3. Whether the reference is hit by the vice of delay and laches as alleged. If so to what effect? . . . OPR.
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No
Issue No. 2 : Yes
Issue No. 3 : Not pressed.

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 & 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Narain Dass stepped into the witness box as PW1. He reiterated on oath the contents of the petition/statement of claim in its entirety. He also stated that he served the respondent up-to 21.11.2005. S/Sh. Dalip Singh and Duni Chand were appointed as beldars by the respondent in the month of October, 1995. Their services have been regularized.

In the cross-examination, he admitted that S/Sh. Dalip Singh and Duni Chand never served under the respondent. Sh. Dalip Singh was appointed in Mandi District, whereas the services of Shri Duni Chand were engaged in Chamba District. He feigned ignorance about the fact that Ms. Rajni Kumari has been appointed against the quota of handicapped persons. Mark-A is his mandays chart issued by the respondent. He denied that his mandays have been correctly shown in the letter Mark-B (lateron exhibited as Ex. RW1/B). He admitted that his services were re-engaged by the respondent when the case was pending before the Hon'ble Administrative Tribunal. He also

admitted that in the year 2005, two regular beldars joined the Potato Development Station, Khunaha on their transfer. He denied that after the joining of regular beldars, no work remained for him. He also denied that the notice Mark-C (subsequently exhibited as Ex. RW1/F) under Section 25-F of the Act was given to him by the respondent. He admitted that his services were terminated w.e.f. 21.11.2005. He denied that one month pay amounting to Rs.2100/- and Rs.12600/- as retrenchment compensation were remitted to him alongwith the termination notice (Mark-C). Further, he denied that the draft Mark-D (lateron exhibited as Ex. RW1/H) was forwarded to him by way of registered post which he refused to accept. He denied that thereafter Shri Sita Ram, Peon approached him with the above noted money which he refused to receive in the presence of the witnesses. He denied that report Mark-E was made by Shri Sita Ram (Peon). He does not know that the retrenchment compensation etc. were deposited by the respondent in the bank by way of a fixed deposit receipt after he refused to accept the same. He denied that he did not receive the termination notice and the compensation etc. intentionally. He admitted that no new person has been engaged by the respondent in the Potato Centre where he was working. He denied that his services have been dispensed with in a lawful manner. He also denied that he was appointed by the respondent without any sanction against the policy of the government and he (PW1) has given a phoney statement.

10. Conversely, Shri A.R. Sharma, Dy. Director of Agriculture, Kullu testified as RW1. In his affidavit Ex. RW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the reply submitted by the respondent.

In the cross-examination, he admitted that notice of retrenchment was given to the petitioner. He denied that the Potato Development Centres at Mandi and Kullu etc. work under the control of the Directorate/Head Office at Shimla. Self stated, the Dy. Director of Agriculture of the concerned District is the Controlling Officer of the Centre. He does not know that S/Sh. Dalip Singh and Duni Chand are junior to the petitioner as they did not work under him (RW1). Ms. Rajni Devi has been appointed against the quota of handicapped persons. The services of the petitioner were terminated as regular beldars were posted in the Potato Development Centre. As per the report on the envelop of the registered letter, the petitioner refused to receive the same i.e. compensation etc. He admitted that the petitioner had served for 10 years. He denied that the petitioner has been removed from service wrongly and he is/was entitled to the regularization of his services.

11. Ex. RW1/C is the copy of a letter dated 18th June, 2003 written by the Director of Agriculture, Himachal Pradesh to the Dy. Director of Agriculture of various Districts (including Kullu) and others. In this letter it was mentioned that the daily wagers whose names have been detailed in the letter have been engaged without prior permission/sanction of the government on or after 11.7.1995 illegally and in violation of the government instructions. It was directed that the services of the persons illegally employed be dispensed with immediately after following the procedure prescribed in the Act. The name of the petitioner figures at serial No.4 of the letter since he was appointed after 11.7.1995.

12. Ex. RW1/D is the copy of an office order dated 08.9.2003 issued by the Dy. Director of Agriculture, Kullu. It depicts that the services of the petitioner were terminated by the respondent without complying with the provisions of Section 25-F of the Act. Therefore, the respondent was directed to re-engage the petitioner forthwith in the public interest. It was also directed that the petitioner may be paid the wages from the date of retrenchment i.e. 25.7.2003 to the date of his re-engagement.

13. Ex. RW1/E is the copy of the order dated January 6, 2006 pronounced by the Hon'ble Administrative Tribunal in O.A. No.2066/2003. It unfolds that the Original Application instituted by the applicant/petitioner was dismissed as infructuous.

14. Mark-C (Ex. RW1/F) is the retrenchment notice dated 17.11.2005 which was sent by hand to the petitioner by the Dy. Director of Agriculture, Kullu. One month pay in lieu of the notice period and retrenchment compensation were also remitted to the petitioner alongwith the notice. It was mentioned in the notice that the services of the petitioner are no more required due to the paucity of budget, because of which the same are retrenched w.e.f. 21.11.2005.

15. Mark-E (Ex. RW1/G) is the letter dated 24.11.2005 which was sent to the petitioner by the Dy. Director of Agriculture, Kullu under registered cover. In this letter it has been highlighted that Shri Sita Ram, Peon was deputed to hand over the retrenchment order and the draft of compensation etc. to the petitioner which he refused to accept in the presence of Shri Bihari Lal, AEO and Shri Madan Lal, Beldar. Due to this reason, the retrenchment notice etc. are sent under registered cover to the petitioner.

16. Mark-D (Ex. RW1/H) is the copy of FDR dated 30.12.2005 issued by the State Bank of India, Kullu Branch. It clarifies that Dy. Director of Agriculture, Kullu had deposited the retrenchment compensation amounting to Rs.12600/- in the bank. The same was deposited after the petitioner refused to receive the same.

17. Ex. RW1/J is the copy of an office order issued in the month of March, 2004. It reveals that Ms. Rajni Kumari was appointed against the vacant post of peon in the office of Dy. Director of Agriculture, Kullu. She belongs to the category of persons with disabilities.

18. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager in the month of October, 1995 and he worked as such up-to the year 2003. Admittedly, the petitioner was terminated from service by the respondent per order dated 25.7.2003 where after the petitioner approached the Hon'ble Administrative Tribunal by instituting O.A. No.2066/2003. During the pendency of the Original Application, the services of the petitioner were reengaged in accordance with the office order dated 08.9.2003 (Ex. RW1/D) issued by the Dy. Director of Agriculture, Kullu. The retrenchment order dated 25.7.2003 was set aside. It was also ordered that the petitioner may be paid the wages from the date of his retrenchment i.e. 25.7.2003 to the date of his reinstatement.

19. There is no denial of the fact that pursuant to the order dated 08.9.2003 (Ex. RW1/D), the services of the petitioner were re-engaged. Thereafter, he served the respondent up-to 20.11.2005. The services of the petitioner were then retrenched by taking recourse to the provisions of Section 25-F of the Act (which was not followed earlier). Retrenchment notice dated 17.11.2005 (Ex. RW1/F) was sent to the petitioner by hand. One month pay in lieu of the notice period and retrenchment compensation were also forwarded to the petitioner which he refused to accept. Thereafter, the retrenchment notice and the compensation etc. were forwarded to the petitioner under registered cover per letter Ex. RW1/G which he once again refused to receive/accept. In these circumstances, the retrenchment compensation amounting to Rs.12600/- was deposited by the respondent in the State Bank of India, Kullu Branch by way of the FDR. It is well known that a workman cannot be forced to accept the compensation etc. by the employer. It is the basic law that all the official acts are presumed to be correctly performed.

20. The evidence available on the record especially the letter Ex. RW1/C clarifies that the services of the petitioner were engaged by the respondent illegally and in violation of the instructions issued by the government. For this reason, Director of Agriculture, Himachal Pradesh directed that the services of the daily wagers who have been wrongly appointed (including the petitioner) be dispensed with after following the due procedure laid down in the Act. Since the requisite procedure was not adopted when the services of the petitioner were disengaged earlier on 25.7.2003, per office order Ex. RW1/D, the services of the petitioner were ordered to be re-

engaged. After that, due procedure as envisaged under Section 25-F of the Act was followed by the respondent to terminate the services of the petitioner.

21. In his cross-examination, the petitioner (PW1) admitted that after his disengagement, no new/fresh hands have been engaged by the respondent. He also admitted that two regular beldars have been posted by the department in the Potato Centre where he was working.

22. It is the admitted case of the petitioner (PW1) that S/Sh. Dalip Singh and Duni Chand are not working under the respondent. They are serving in Mandi and Chamba Districts, respectively. So far as Ms. Rajni Kumari is concerned, the office order (Ex.RW1/J) clarifies that she has been appointed against the quota of posts reserved for the disabled persons. The petitioner cannot claim any parity with her as well as S/Sh. Dalip Singh and Duni Chand.

23. At the cost of reiteration, I will like to add that the initial appointment of the petitioner itself was wrong and illegal. His services have been rightly terminated after observing all the codal formalities. Ordering the reinstatement of the petitioner in service will perpetuate the wrong which is not permissible under the law.

24. Such being the situation, it is held that no provision of the Act has been violated by the respondent. The services of the petitioner have been rightly dispensed with. The claim petition/reference is not maintainable. The petitioner is not entitled to any relief. The avarice of the petitioner to grab the government job and money has forced him to file a totally false and baseless claim.

25. These issues are decided against the petitioner and in favour of his opponent.

Issue No. 3

26. Not pressed.

Relief (Issue No. 4)

27. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3000/-.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 10/2010

Date of Institution : 16.1.2010

Date of Decision : 03.10.2012

Shri Raghuvir Singh s/o Shri Udham Singh, r/o Village Bangarh, P.O. Jakhera, Tehsil &
District Una, H.P. . . *Petitioner.*

Versus

Managing Director M/S Welson Texchem (Pvt.) Limited, Mehatpur, District Una, H.P.
. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent: Sh. Vipul Bhardwaj, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Raghuvir Singh s/o Shri Udham Singh by the Managing Director, M/S Welson Texchem (Pvt.) Limited, Mehatpur, District Una, H.P. w.e.f. 10.03.2008 without complying various provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, service benefits the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a security guard in the factory at Mehatpur by the respondent from 1st May, 2007. He continuously served as such up-to 10.3.2008. During the period of his employment the payment was made to him by the respondent on the wages register which was received by him (petitioner). He had completed more than 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 10.3.2008. One Shri Karam Chand was also appointed as a security guard by the respondent. He (petitioner) and Shri Karam Chand were deployed in rotation for 12 hours per day. He (petitioner) was paid only Rs.2100/- per month for 12 hours duty which is less than the wages prescribed under the Minimum Wages Act, 1948. The State Government has fixed the monthly minimum wages of unskilled categories @ Rs.2250/- each month w.e.f. 01.1.2007. The minimum wages were enhanced to Rs.3000/- per mensem w.e.f. 01.1.2008. He (petitioner) is entitled to the minimum wages as per the Minimum Wages Act, 1948 for working 12 hours daily. In the month of February, 2008, he requested the respondent to pay the minimum wages @ Rs.3,000/- every month and pay the extra wages for four hours overtime per day. He (petitioner) also requested the respondent to give all the benefits like leave with wages, casual leave, sick leave and national festival holidays as per the provisions of the Factories Act, 1948. His request was not acceded to by the respondent. On 10th March, 2008, he (petitioner) was not allowed to work by the respondent without any reason. His services have been retrenched by the respondent without assigning any cause. Before the termination of his services, neither any charge sheet was served upon him nor he was informed about the misconduct if any. No inquiry was

conducted against him. Neither the retrenchment compensation was paid nor the permission for retrenchment as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short) was obtained by the respondent. Three months pay in lieu of the notice period was also not paid to him. After the termination of his services, one Shri Ram Lal has been appointed as a security guard by the respondent. He (petitioner) was not given an opportunity of re-employment. From the date of his termination, he is unemployed. The act and conduct of the respondent is highly illegal and unjustified. It is also violative of Sections 25-F and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case.

- “i) The Hon’ble Court may kindly be set aside the unlawful termination order dated 10.3.2008 and directed to respondents to reinstate the services of applicant with full back wages, in continuity of service with seniority and all other consequential service benefits throughout.
- ii) The Hon’ble Court again kindly be directed to respondent to pay the extra 4 hours payment for over time under the provision of Factory Act, for the period from 01.05.2007 to 10.03.2008.
- iii) The Hon’ble Court further kindly be directed to respondent to pay 9% interest on back wages and also pay Rs.5000/- as litigation cost and any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petitioner has no cause of action and locus standi to sue. The claim petition is not maintainable. The petitioner is estopped from filing the petition by his act and conduct. He has suppressed the true and material facts from the Court. The petitioner has not approached the Court with clean hands. He has instituted the instant claim petition with a malafide intention to harass him (respondent).

On merits, it has been owned that the services of the petitioner were engaged as a security guard in the month of May, 2007. The petitioner served till 8th March, 2008 and not 10.3.2008 as alleged. He (respondent) has made the entire payment to the petitioner for the period he worked with him. During the period of his employment, the petitioner was never sincere towards his duties. He did not work honestly or efficiently. The petitioner did not complete 240 days of work as alleged. He and Shri Karam Chand were not detailed for duty for 12 hours per day by rotation. The petitioner and Shri Karam Chand were engaged for only eight hours daily. The petitioner was made the payment much more than the wages provided under the Minimum Wages Act, 1948. All the benefits as per the Factories Act were also extended to the petitioner. He and the other workmen were given casual leaves and sick leave etc. From the day of joining the service in the year 2007, the petitioner was never honest and loyal towards his duties. As and when he was asked to work properly, he misbehaved. The petitioner was asked several times to work honestly and with dedication. This aggravated the situation from bad to worse. The petitioner frequently misbehaved with the staff, labour and his colleagues. He was always bent upon to bring a bad name to him (respondent) and harm his reputation. During the period of employment of the petitioner, a theft took place. Drums of chemicals were stolen from the factory premises. The petitioner who was well aware about the theft did not care to inform the authorities so that proper action can be initiated. When he (respondent) came to know about the theft after some time from other workmen and enquired from the petitioner about the same, the petitioner instead of admitting his fault misbehaved as well as threatened the other workmen of dire consequences for bringing the fact of

theft to his (respondent's) notice. The petitioner in connivance with some unscrupulous elements always tries to harm the business and reputation of the factory. The petitioner did not improve his behaviour despite repeated requests. In March, 2008, when the petitioner was asked to work honestly and faithfully, instead of mending his ways he stopped coming to the factory. The services of the petitioner were not disengaged as alleged. It stands admitted that Shri Ram Lal is now working as a security guard. Since the petitioner left the job voluntarily, there is no question of his re-employment. No provision of the Act has been infringed. The petitioner is gainfully employed. Immediately after leaving the job, he joined the duties in some other company. The petition is false, frivolous and baseless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed with heavy costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

It has been denied that he was not sincere towards his duties or some theft was committed in the factory premises. He never abandoned the job.

5. Per order dated 17.6.2011, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 10.3.2008 is violative of the provisions of section 25-F & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the reference is not maintainable as alleged. If so, to what effect? . . . OPR.
3. Whether the petitioner has suppressed the material facts from this Court and has not approached this court with clean hands as alleged. If so, to what effect?..OPR.
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 :	Yes
Issue No. 2 :	Not pressed
Issue No. 3 :	Not pressed
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Raghuvir Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he joined as a security guard on 01.5.2007. He denied that he served only up-to 08.3.2008. Self stated, he worked till 10.3.2008. He denied that he was not honest and faithful during the period of his employment as well as used to misbehave with

others. He also denied that a theft had taken place in the company premises and when the officials of the respondent/company asked him to mend his ways, he abandoned the job. He rears the cattle at home and sells the milk. He denied that he is not entitled to reemployment and has given a phoney statement.

9. Conversely, Shri Narinder Singh, Factory Manager of the respondent, testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner used to work for 12 hours daily. He also denied that the petitioner was removed from service. He admitted that after the disengagement of the petitioner one Shri Ram Lal has been employed as a security guard. He admitted that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the job. He also admitted that no inquiry was conducted against the petitioner.

10. Ex. RW1/B is the copy of the resolution passed by the respondent company. It unfolds that Shri Narinder Singh (RW1) was authorized by the company to appear on its behalf in the Court.

11. No reference has been received from the appropriate Govt. regarding the payment of less wages to the petitioner or not providing the casual leave etc. to him by the respondent as per law. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

12. It is the admitted case of the respondent that the services of the petitioner were engaged as a security guard on 1st May, 2007 and he worked continuously up-to 08/03/2008. The version of the petitioner is that on 10.3.2008, his services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own when he was asked to improve his behaviour as well as discharge the duties honestly and faithfully.

13. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of Shri Narinder Singh (RW1) that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the job of his own accord and free volition. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

14. In view of the admissions made by the respondent, it can be safely said that the petitioner had served for more than 240 days during a block of 12 calendar months preceding the date of his termination i.e. 10.3.2008 as envisaged under Section 25-B of the Act.

15. Section 25-F of the Act postulates as under:-

“25-F. Conditions precedent to retrenchment of workmen.-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (b) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

16. There is not even an iota of evidence on the file to show that the mandatory provisions of the above quoted sections were complied with by the respondent.

17. Not only this, Shri Narinder Singh (RW1) admitted in his crossexamination that after the disengagement of the petitioner, one Shri Ram Lal was employed as a security guard. There is nothing on the record to prove that before engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner by the respondent.

18. No FIR was got registered by the respondent relating to the alleged theft. Even no inquiry was conducted against the petitioner for his alleged misconduct, if any.

19. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-F and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

20. So far as the payment of back wages to the petitioner is concerned, I will like to say that while deposing in the Court as PW1, the petitioner has given his age as 51 years. During the cross-examination, he admitted that he has kept the milching cattle and sells the milk. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

21. This issue is decided in favour of the petitioner and against the respondent.

ISSUE No. 2

22. Not pressed.

ISSUE NO. 3

23. Not pressed.

Relief (Issue No. 4)

24. As a sequel to my findings on issue No.1, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 10.3.2008 except back wages. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 198/2010

Date of Institution : 30.6.2010

Date of Decision : 03.10.2012

Shri Rajeev Gupta s/o Shri Kedar Nath Gupta, r/o Village Uppar Barol, P.O. Dari, Tehsil
Dharamshala, District Kangra, H.P. . . *Petitioner.*

Versus

Deputy Commissioner, Kangra at Dharamshala, District Kangra, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Rajeev Gupta s/o Shri Kedar Nath Gupta Data Entry Operator by the Deputy Commissioner, Kangra at Dharamshala, District Kangra, H.P. w.e.f. 20.4.2002 after serving him 24 hours notice dated 20.4.2002 (Copy enclosed) along with draft of Rs.2,700/- in lieu of one month notice after paying him retrenchment compensation amounting to Rs.12,150/- is legal and justified? If not, to what back wages, service benefits and relief the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he is B.Sc. 1st Class and diploma holder in computer applications from the Himachal Pradesh University. He is/was enrolled with the employment exchange at Dharamshala. He is eligible for holding various posts where there is computerization or the application of computer is involved. The office of Deputy Commissioner, District Kangra at Dharamshala (respondent) requisitioned from various employment exchanges the names of the eligible candidates for filling up the posts of Data Entry Computer Operators. His (petitioner's) name was sponsored by Employment Exchange, Dharamshala. Per letter dated 17.7.1992, he was directed to appear in the written examination

scheduled for 05.8.1992. He (petitioner) took the written examination and qualified the same. He was also subjected to the personal interview. On the basis of the result of the written examination and his performance in the interview, his name was recommended for the post of Data Entry Computer Operator. Per memo dated 28.3.1993, he was offered the appointment as Data Entry Computer Operator by the Additional Deputy Commissioner Kangra at Dharamshala. He (petitioner) accepted the offer and joined as such vide joining report dated 03.4.1993. From the date of his joining, he was performing all the duties attached to the post of Data Entry Computer Operator. Since no regular person was appointed as Data Entry Computer Operator, he was the only person performing the said duties. He served to the best of his ability and was never found lacking by his superiors. Sometimes he worked after the duty hours. His work was widely appreciated by the higher authorities. Initially, from April, 1993 to November, 1994 he was given the wages on piece rate basis as per the terms and conditions of the appointment letter dated 28.3.1993. From December, 1994, his services were engaged on daily wage basis. He was paid the daily as per the notifications issued by the State Government from time to time. The daily wages were also enhanced from December, 1994 to the date of his illegal termination. When he was made a daily wager, no appointment letter was issued in his name. He (petitioner) had completed more than 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination i.e. 20.4.2002. In the year 1997, he requested the respondent to consider him for regularization since he (petitioner) was discharging the duties of Data Entry Computer Operator and land record computerization since the year 1993. The Government of Himachal Pradesh has framed a policy that the daily wagers who have completed eight years of service in any Government department will be regularized on the same post. He (petitioner) was appointed in the year 1993. He had completed eight years of service with 240 days in each and every year on 31.12.2000. He is/was thus entitled to the regularization w.e.f. 01.1.2001 in the regular pay scale. His request for regularization was not considered by the respondent. He then instituted O.A. No.3199/2001 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal, Shimla. He was shifted to the office of District Planning Officer, Kangra at Dharamshala in the year 1997 where he (petitioner) continuously worked up-to 19.4.2002. Surprisingly, his services have been retrenched by the respondent a non-appointing authority, per letter dated 19th April, 2002 as per Section 25-F read with Section 2 of the Industrial Disputes Act, 1947 ('the Act' for short). The retrenchment compensation amounting to Rs.12,150/- was also paid to him by the respondent through a bank draft. Before the termination of his services neither any show cause notice was given to him nor he was charge sheeted. Even no inquiry was conducted against him for the misconduct, if any. One month pay in lieu of the notice period has not been given to him (petitioner). Not only this, the respondent has not communicated with the appropriate Government before or after the retrenchment as required under Section 25-F (c) of the Act. His services have been dispensed with by the respondent in view of the fact that he had made a request for regularization. The post of Data Entry Operator is/was of permanent nature. After the retrenchment of his services, the respondent has engaged the regular employees like Senior Assistants/Clerks to operate the computer in his (petitioner's) place. The work was available when he (petitioner) was removed from service. His services have been terminated during the pendency of O.A. No.3199/2001. The respondent did not move any application before the Hon'ble Administrative Tribunal as envisaged under Section 33 (2) (b) of the Act for the grant of permission to terminate his services. The Hon'ble Administrative Tribunal was wound up by the State Government by issuing a notification in the year 2008. The cases pending disposal before the Hon'ble Administrative Tribunal were referred to the Hon'ble High Court of Himachal Pradesh. O. A. No.3199/2001 was converted as CWP No.8138/08. The said Civil Writ Petition has been decided by the Hon'ble High Court per judgment dated 04.8.2009. The Hon'ble High Court has ordered that in case he (petitioner) assails the notice of the termination of his services before the appropriate Court/Forum, he will be permitted to take up the plea of non-regularization of his services. The work of pilot project on land record data entry was completed in November, 1994. After that, he (petitioner) was shifted to the office of the Planning Officer as a daily wager. Before the

termination of his services, he was not given an opportunity of personal hearing. Per application dated 12.7.2002, he requested the respondent to pay the balance salary from January, 2002 to 20.4.2002 to him. No reply to this application was received from the respondent. Thereafter, in the month of July, 2010, he requested the respondent to convey the reasons for withholding the payment. District Planning Officer, Kangra at Dharamshala vide his reply/letter dated 06.8.2010 informed him that all the dues have been paid to him (petitioner). From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “i) The Hon’ble Court may kindly be set aside the termination order dated 19.04.2002/20.04.2002 on the above ground and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits throughout in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been violated. The petition is bad on account of delay and laches on the part of the petitioner. He has misrepresented himself and has concealed the material facts from the Court. The office of the Deputy Commissioner is not an industry as defined in the Act. The petitioner is not a workman. He was engaged for discharging the sovereign functions of the State i.e. the maintenance of land record and its data entry. The petitioner was also supposed to do data entry of various schemes of the department.

On merits, paras 1 to 16 of the reply read thus:

- “1. That the contents of para 1 of the claim petition are admitted to the extent of academic qualification of the applicant. Rest of the contents of this para are denied for want of knowledge.
2. That the contents of para 2 of the claim petition are also admitted.
2. That the contents of para 3 of the claim petition are wrong and hence denied. It is however submitted that applicant was engaged for the post of Data Entry Operator for land records computerization data entry in D.C. Office Kangra at Dharamshala on contract basis vide this office letter number DCC (10) DEO (LRC)/93-80 dated 28.3.1993 (Annexure R/1). As per the term of the contract, the services of Shri Gupta were required up to the completion of Pilot Project on land Record Data Entry. It is clear in the appointment letter that payment was on the basis of khewat numbers entered correctly @ Rs.2.00 per khewat (para-2 of letter (ibid). It is further stated that beside Shri Gupta, five other persons as per (Annexure R/2) were also engaged on contract basis for the same job. Since the task of land records data entry was completed in the month of August, 1997, therefore their services were dispensed with (Annexure –R/3). However Sh. Rajeev Gupta was again engaged for another assignment i.e. backlog data entry of development schemes in Planning Branch from September, 1997, keeping in view his request for further engagement and also the workload in that branch. Sh. Gupta was engaged merely on contract basis and that there is no regular post of data entry

operator with the respondent. Therefore, the question of regularization of his services does not arise. It is further submitted that the services of other similarly situated Data Entry Operator who were engaged alongwith the petitioner were dispensed with the closer of the scheme w.e.f. August, 1997.

4. That the contents of para 4 of the claim petition are wrong and hence denied. It is however submitted that the Project on land Records data entry got completed in the month of August 1997. As explained in para-3 above the petitioner was further engaged w.e.f. September, 1997 in Planning Branch on the contract basis @ 0.75 paisa per entry/record for LDP/DCR/Relief heads and Rs.1 per entry for MPLADS head vide letter number, 105/CPO, dated 6th June 1997 placed as (Annexure R/4). However, since it was not possible to count for the data entries on daily basis, he was initially allowed Rs.50/- per day as wages, which were acceptable to him. It is further stated that the wages have been enhanced twice from Rs.50 to 70 on 1st July 1998 and further to Rs.90 w.e.f. 1st November 1998. Further with the completion of the work in the Planning Branch the services of the applicant were disengaged by serving him Notice Under Section 25 F alongwith one month's advance salary Rs.2700/- and the compensation as calculated under Section 25 F(b) amounting to Rs.12,150/- was also paid. Copy of the Notice under Section 25(F) is being annexed as (Annexure R/5). The amount Rs.2700/- as advance salary and compensation was dually accepted by the petitioner. The detailed mandays chart of the applicant is also being annexed as (Annexure R/6).
5. That the contents of para No.5 of the claim petition are wrong and hence denied. It is however submitted that the petitioner was initially engaged as peace rated Data Entry Operator and subsequently w.e.f. September, 1997 his remuneration were changed from the peace rated to daily wages. The engagement of the petitioner was purely on account of completion of Project/Schemes and his services were liable to be conterminous with the closer of the Project. It is further submitted that the above terms and condition of the engagement were well within the knowledge of the applicant as is evident from his appointment letter (Annexed R/1). Since the applicant was not engaged against a regular/cadre post as such the question of his regularization after 240 days of continuous service for 8 years does not arise at all. Further more the O.A. No.3199/2001-97 dated 31.12.2001 on the abolition of H.P. Administrative Tribunal was taken up vide CWP (T) No.8138 of 2008 and the petition of the applicant was dismissed on merits. Copy of the order passed by Hon'ble High Court dated 04-08-2009 is being annexed as (Annexure R/7).
6. That the contents of the Para 6 of the claim petition are wrong and hence denied. A detailed reply has already been given Para's above.
7. That the contents of Para 7 of the claim petition are admitted to the extent of issuance of Notice under Section 25 F. The respondent on its part has complied with the above provision of law in letter and spirit. Besides above protection of law the applicant was not entitled for any of the protections as has been claimed by him, in this Para.
8. That the contents of Para 8 of the claim petition are wrong and hence denied. As discussed above O.A. No.3199 of 2001 turned as CWP (T) No.8138 of 2008 has been dismissed by the Hon'ble High Court on merits.

9. That the contents of Para No.9 of the application are wrong and hence denied. The engagement of the petitioner was purely on temporary basis. A detailed discussion has already been made in Para's above.
10. That the contents of para 10 of the claim petition are wrong and hence denied. In this regard it is submitted that no concession was ever given to the applicant by the respondent in his reply to para 8 of the O.A. No.3199 of 2001 before the Hon'ble Administrative Tribunal. Rather the stand of the respondent is categorical that with the filling up of regular post the service of the applicant are liable to be terminated. Further the para 8 of the said reply is to be read in conjunction with whole of the reply. The copy of the reply by the respondent before Administrative Tribunal is being Annexed as Annexure R/8. It is further submitted that the provision of Section 33-2(b) of the Industrial Tribunal Act, 1947 were not applicable before the H.P. Administrative Tribunal.
11. That the contents of para 11 of the petition need no reply, being matter of record.
12. That the contents of para 12 of the petition are wrong and hence denied. The services of petitioner were disengaged after the completion of computerization of the land record entries as well as various development schemes in the office of the respondent.
13. That the contents of para 13 of the application are wrong and hence denied. A notice Under Section 25 F has duly been issued to the respondent.
14. That the contents of para 14 of the application are wrong and hence denied. It is submitted that nothing remains to be paid to the applicant on account of his wages. The wages of the applicant for the period January 2002 to 20-4-2002 has duly been released to the applicant vide Cheque No.441162 dated 06/12/2010.
15. That the contents of para 15 of the application are wrong and hence denied. The applicant is gainfully employed and is running a computer Centre in village Barol Dharamshala for his livelihood.
16. That the contents of para 16 of application are wrong and hence denied. Nothing is being withheld from the Hon'ble Court".

In these circumstances, the respondent prays that the petition being meritless be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he worked from the year 1993 to 19.4.2002 i.e. for more than eight years under the respondent. He was paid the wages/salary for the whole period except from January, 2002 to 19.4.2002. The pay for this period was given to him on 06.12.2010 i.e. after about eight years. Other data entry operators left the job on their own on different dates. Their services were not disengaged by the respondent from August, 1997. The question of his engagement on contract basis w.e.f. September, 1997 in the Planning Branch does not arise since he was already working on daily wage basis from December, 1994. He (petitioner) has no knowledge that the pilot project of land record was completed in the month of August, 1997. He was being paid the daily @ Rs.90/- pursuant to the representation made by him. Strangely, somebody in the office of the respondent has done the tampering in the noting dated 30.10.1998. When the file was put up before the concerned authority, there was no reference in the noting dated 30.10.1998 with respect to the stipulation that his services have been engaged

from November, 1998 to October, 1999 on contract basis. His services have been terminated by the respondent arbitrarily. In his (petitioner's) place, new persons namely Shri Vikesh Pathania and Smt. Suman Bala have been appointed by the respondent on 11.11.2009 and 01.1.2010 respectively. Sufficient work of data entry operator was available when he was removed from service.

5. Per order dated 02.6.2011, below given issues were struck by my ld. Predecessor:
 1. Whether the disengagement of the petitioner w.e.f. 20.4.2002 is violative of the provision of section 25-F of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
 2. Whether the reference is not maintainable as alleged. If so, to what effect . . . OPR.
 3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? . . . OPR.
 4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No
 Issue No.2 : Yes
 Issue No.3 : Not pressed
 Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Rajeev Gupta stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the documents Marks A to Z which will be discussed by me in the later part of this Award.

In the cross-examination, he admitted that his services were engaged as a Data Entry Operator for land record computerization per letter dated 28.3.1993. He had read the conditions of the appointment contained in the letter dated 28.3.1993 and thereafter joined the service. He admitted that his services were engaged in a project. Five other persons were appointed in the project. He denied that he was junior to all the persons appointed in the project of land records computerization. He also denied that the project continued up-to the year 1997. Self stated, the project came to an end in the year 1994. He admitted that initially all the persons were appointed as piece rated workers in the land records computerization project. He denied that on 6th June, 1997, he and Shri Jagarnath were shifted as Data Entry Operators to the Planning Wing in the office of the respondent. He refuted that initially his services were engaged as a piece rated worker and from the year 1997 onwards, Rs.50 per day as wages were being paid to him. He denied that Shri Jagarnath did not join the Planning Wing and he (PW1) only joined the said Wing. He admitted that

a notice dated 20th April, 2002 under Section 25 F of the Act was served upon him by the respondent. One month pay in lieu of the notice period and retrenchment compensation were received by him. He admitted that he had instituted a case before the Hon'ble Administrative Tribunal for the regularization of his services. Further, he admitted that the original application preferred by him was transferred to the Hon'ble High Court of Himachal Pradesh where it was converted into a Civil Writ Petition. The CWP was dismissed by the Hon'ble High Court on 04.8.2009. He admitted that the present industrial dispute was raked up by him in the year 2009. He also admitted that from the year 1993 to 2002, the Government of Himachal Pradesh computerized all its offices. He denied that the other data entry operators left the service of their own as and when the work assigned to them was completed. None of the five persons who were working with him (PW1) as data entry operators, is serving in the office of the respondent nowadays. He does not know that the services of Shri Vikesh Pathania have been engaged by e-Governance Society. He is not aware of the fact that Smt. Suman Bala was serving as a trainee-cum-apprentice in the Welfare Department. He has no knowledge that on the completion of her training Smt. Suman Bala was appointed by DOEACC Society of the Central Government in Tribal Development Department. He does not know that the services of Smt. Suman Bala have been transferred from Tribal Development Department to the office of the respondent. He admitted that the respondent/department owes him nothing. He denied that he is not entitled to the re-employment etc. He controverted that he runs his own computer centre and is gainfully employed.

10. Conversely, Shri Sukh Dev Verma, District Revenue Officer, Dharamshala testified as RW1. He corroborated on oath the contents of the reply submitted by the respondent. He also stated that the Revenue Data Entry Project came to an end in the year 1997. All the six data entry operators (including the petitioner) were not allowed to continue working in the Revenue Department. The petitioner and Shri Jagarnath were shifted to the Planning Branch as Data Entry Operators. The petitioner then served the Planning Branch.

In the cross-examination, he admitted that five other Data Entry Operators left the job willingly. Volunteered, the work of land record computerization was complete. He denied that the land records were fully computerized up-to the month of November, 1994.

11. RW2 is Shri Gautam Chand, District Planning Officer, Kangra at Dharamshala. In his affidavit Ex. RW2/A filed in accordance with Order 18 Rule 4 CPC, he supported the version of the respondent.

In the cross-examination, he admitted that the petitioner served the Revenue Department up-to the month of September, 1997. He also admitted that per order Ex. RW2/B issued by the Deputy Commissioner, Kangra, the services of the petitioner were shifted from the Revenue Department to the Planning Branch. Daily wages were being paid to the petitioner from the month of December, 1994 onwards and the petitioner worked up-to 20.4.2002. He admitted that no agreement was executed between the petitioner and the respondent/State that on the closure of the scheme or project, his services will stand automatically terminated. He also admitted that the petitioner was removed from service during the pendency of the case instituted by him. He denied that new posts were created and thereafter, Shri Vikesh Pathania was appointed. Smt. Suman Bala has been shifted to the Planning Branch from the Tribal Department without his (RW2's) consent. He admitted that the services of Smt. Suman Bala were engaged initially for six months and she is working in the Planning Department after being shifted from the Tribal Department. No new person has been appointed by the Planning Department. He admitted that the petitioner was not called for re-employment.

12. Mark-A is the copy of a letter dated 17.7.1992 written by the respondent to the petitioner. As per this letter, the name of the petitioner was sponsored by the local employment

exchange for the post of Data Entry Operator on contract basis limited to the data entry for Dharamshala Tehsil only. The petitioner was asked to take the written examination scheduled for 05.8.1992.

13. Mark-B is the copy of the appointment letter dated 28th March, 1993 issued by the Additional Deputy Commissioner, Kangra at Dharamshala in the name of the petitioner. It corresponds to Ex. RW1/A.

14. Mark-C is the joining report dated 03.4.1993 submitted by the petitioner pursuant to the appointment letter Mark-B issued in his favour.

15. Mark-D is the copy of an office order dated 4th January, 1995 issued by the Deputy Commissioner, Kangra at Dharamshala. It was ordered that the Data Entry Operators will be paid Rs.50/- per day as wages.

16. Mark-E is the copy of an application dated 01.9.1997 given by the petitioner to the respondent for his appointment/adjustment against some regular post.

17. Mark-F is the copy of the letter written by the respondent to the District Employment Officer, Dharamshala. Vide this letter the respondent forwarded the application Mark-E of the petitioner to the District Employment Officer for further necessary action.

18. Mark-G is the copy of a letter dated 06.2.1999 written by the Coordinator, District Training Centre, Kangra at Dharamshala to the Assistant Commissioner to the Deputy Commissioner with respect to the computer training course from 09.2.1999 to 11.2.1999. It clarifies that the petitioner, who was working in the Planning Branch, was nominated for the training course.

19. Marks H and I are the copies of the applications dated 02.6.1998 and 26.10.1998 submitted by the petitioner in the office of the respondent for the increase of the daily wages.

20. Marks- J and K are the letters dated 6th August, 1998 and 18th November, 1998 written by the District Planning Officer, Kangra at Dharamshala. They clarify that the daily wages/remuneration of the petitioner was enhanced from Rs.50/- to Rs.70/- and thereafter from Rs.70/- to Rs.90/- every day.

21. Mark-L is the copy of experience certificate issued in favour of the petitioner by the District Informatics Officer, Kangra at Dharamshala.

22. Mark-M is the copy of an office order dated 14.12.1998 issued by the respondent. It shows that the petitioner who was working as a daily waged computer operator in the planning wing was permitted to take the examination of M.A. (Economics) as a private candidate.

23. Marks- N and O are the copies of the office noting dated 30.10.1998 of the office of the respondent.

24. Mark-P is the copy of a letter dated 24th July, 2000 written by the respondent to the District Planning Officer, Kangra at Dharamshala regarding the request made by the petitioner for regularization of his services.

25. Mark-Q is the copy of an application dated April 11, 2002 written by the petitioner to the respondent to pay him the salary for the months of January, 2002 to March, 2002.

26. Marks -R, S and T are the copies of the applications given by the petitioner to the respondent on different dates for the regularization of his services.

27. Mark-U is also the copy of the application dated 17.6.2010 given by the petitioner to the respondent for the payment of salary for the months of January, 2002 to April, 2002.

28. Mark-V is the copy of the application dated 12.7.2010 given by the petitioner to the Public Information Officer in the office of the respondent to convey the reasons for non payment of the salary.

29. Mark- W is the copy of a letter dated 6th August, 2010 written by the District Planning Officer to the petitioner. The information as required by the petitioner/applicant was supplied to him.

30. Mark-X is the copy of the termination notice dated 20th April, 2002 served upon the petitioner by the respondent under Section 25-F read with Section 2 of the Act.

31. Mark-Y is the copy of a letter dated 8th December, 2010 written by the District Planning Officer to the petitioner. It reveals that pursuant to the application dated 17.6.2010 (Mark-U) given by the petitioner the salary from 01.1.2002 to 19.4.2002 amounting to Rs.9,810/- was paid to him vide a cheque, the copy of which is Mark-Z.

32. Ex. RW1/B is the detail of the persons engaged as Data Entry Operators for land record computerization data entry in the office of the respondent. It reveals that six persons were appointed in the above noted scheme/project. The first five persons namely S/Sh. Jagarnath, Sunil Kumar, Sudhir Kumar, Ajay Kumar and Jai Prakash were appointed per letter dated 11.3.1993. The petitioner was appointed on 28.3.1993 and is/was the junior most Data Entry Operator.

33. Ex. RW1/C is the detail of the payment made for the month of July, 1997 to the data entry operators namely Shri Jagarnath and Shri Rajeev Gupta (petitioner). They were paid daily wages @ Rs.50/- each working day.

34. Ex. RW2/B is the copy of the letter dated 6th June, 1997 written by the respondent to the effect that the Data Entry Operators will complete the backlog of the entries. As per the directions issued by the respondent, the petitioner and Shri Jagarnath were instructed to start data entry job immediately.

35. Ex. RW2/C is the copy of the termination notice. It corresponds to Mark-X.

36. Ex. RW2/D is the mandays chart relating to the petitioner. It clarifies that the petitioner started working in the office of the respondent in the month of April, 1993. Up-to the month of November, 1994, he was made the payment on the basis of the entries done by him. From December, 1994 onwards the payment was made to the petitioner as a daily wagger.

37. Ex. RW2/E is the copy of the judgment dated August 4, 2009 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP (T) No.8138/2008 titled as Shri Rajeev Gupta vs. State of Himachal Pradesh & Anr.

38. Ex. RW2/F is the copy of the reply submitted by the respondents in O.A. No.3199/200-97 before the Hon'ble Administrative Tribunal. In para 8 of the reply it was mentioned that the engagement of the applicant/petitioner has been continued keeping in view the ban on filling up the posts. As soon as the vacancies are filled by district recruitment/transfer, the services of the petitioner/applicant are liable to be terminated.

39. Ex. RW2/G is the copy of an office order dated 07.11.2009 issued by the Secretary, District E-Gov. Society-cum-SDM, Dharamshala. It clarifies that the services of Shri Vikesh Pathania, Data Entry Operator, LRC Dharamshala were placed at the disposal of District Planning Officer in the office of the respondent purely as a temporary and stop-gap arrangement till further orders.

40. Ex. RW2/H is the copy of a letter dated February 1, 2011 written by DOEACC SOCIETY to Miss Suman Bala. It unfolds that Miss Suman Bala was offered the appointment as computer operator on contract basis against the project up-to 31.1.2012. She is/was to be deployed in Tribal Office, Shimla on Outsourcing basis only.

41. Ex. RW2/I is the copy of the office order issued in the month of December, 2009 by the respondent. It depicts that six trainees of PGDCA were adjusted in different branches of the office of the respondent in accordance with the letter written by the District Welfare Officer, Kangra at Dharamshala. Smt. Suman Bala was deployed in the Planning Wing of the office of the respondent.

42. It is the admitted case of the parties that the services of the petitioner were engaged as a Data Entry Operator in a project i.e. land records computerization per appointment letter dated 28.3.1993, the copies of which are Mark-B and Ex. RW1/A. The petitioner was appointed on contract basis and the term of the contract was limited up-to the completion of Pilot Land Records Data Entry. The petitioner was initially paid the remuneration on the basis of the entries correctly recorded by him in the computer @ Rs.2/- per khewat. In the scheme/project, six persons were appointed. Their details are contained in Ex. RW1/B. Since the petitioner was the last to be appointed, he was the junior most.

43. The petitioner joined as a Data Entry Operator per joining report dated 03.4.1993 (Mark-C). The petitioner (PW1) in his cross-examination admitted that before joining his duties, he had read the terms and conditions of his engagement as contained in the appointment letter dated 28.3.1993. It has come in the statement of the petitioner (PW1) that none of the other five persons who were engaged in the scheme/ project of land records computerization is serving the respondent at present.

44. The copy of the office order (Mark-D) and the mandays chart Ex. RW2/D make it clear that from April, 1993 to November, 1994, the payment was made to the petitioner on the basis of the entries incorporated by him correctly. From December, 1994 up-to the date of his termination, he was paid the wages on daily basis. Initially, the wages were Rs.50/- per day which were enhanced to Rs.70/- and thereafter Rs.90/- per day.

45. Letter dated 6th June, 1997 written by the respondent, the copy of which is Ex. RW2/B, clarifies that two Data Entry Operators at District Computer Centre, Dharamshala were deputed for completing the backlog data entries. They were the petitioner and Shri Jagarnath. Both of them were deputed in the planning section of the office of the respondent. Admittedly, Shri Jagarnath did not report for duty in the planning section whereas the petitioner started working in the planning section under the control of the District Planning Officer, Kangra at Dharamshala.

46. There is no denial of the fact that the services of the petitioner were terminated by the respondent by issuing a notice dated 20th April, 2002 under Section 25-F read with Section 2A of the Act. Mark-X and Ex. RW2/C are the copies of the termination notices. One month pay in lieu of the notice period and retrenchment compensation were sent alongwith the notice to the petitioner by the respondent by way of demand drafts. The drafts and the notice were received by the petitioner without any protest. Since the petitioner was the junior most data entry operator

appointed in the scheme/project of land records computerization, the respondent had every right to terminate his services by taking recourse to the provisions of Section 25-F of the Act. True it is that the copy of the termination notice was not served in the prescribed manner on the appropriate Government by the respondent as envisaged under Section 25-F (c) of the Act. The same will not come to the rescue of the petitioner for the simple reason that the condition prescribed under Section 25-F (c) of the Act is neither mandatory nor a condition precedent. Clause (c) of Section 25-F of the Act is only informative in nature. In *Bombay Union of Journalists & Ors. vs. State of Bombay & Anr.*, AIR 1964 SC 1617, it has been held that:

“.....Clause (a) of S. 25-F, therefore, affords a safeguard in the interests of the retrenched employee; it requires the employer either to give him one month's notice or to pay him wages in lieu thereof before he is retrenched. Similarly, clause (b) provides that the workman has to be paid at the times of retrenchment, compensation which shall be equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months. It would be noticed that this payment has to be made at the time of retrenchment, and this requirement again provides a safeguard in the interests of the workman.....These provisions have to be satisfied before a workman can be retrenched. The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause (c). Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the Appropriate Government about the retrenchment, and that only helps the Government keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provisions prescribed by clause (c) a condition precedent as in the case of clauses (a) and (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) and (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) and (b), is not a condition precedent”.

In view of the trite laid down in the above quoted ruling the non compliance of Section 25-F (c) of the Act is not fatal to the cause of the respondent.

47. It is not the case of the petitioner that his service conditions were changed to his disadvantage by the respondent. Even no reference in this regard has been received from the appropriate Government. The evidence available on the record goes to show that the salary from 01.1.2002 to 19.4.2002 amounting to Rs.9,810/- was paid to the petitioner by the respondent through a cheque dated 06.12.2010 the copy of which is Mark-Z. The retrenched workman (petitioner) was not paid the wages within two working days from the date of retrenchment i.e. 20.4.2002. This payment was also received by the petitioner without any objection. Therefore, it cannot be said that the delayed payment of the wages/salary by the respondent has invalidated the retrenchment. The provision is only directory and not mandatory.

48. The petitioner was working in the planning wing/department of the office of the respondent when he was removed from service. So far as the appointments of Shri Vikesh Pathania and Smt. Suman Bala in the planning wing/section are concerned, the evidence brought on the record by the respondent clarifies that Shri Vikesh Pathania is/was an employee of District E-Governance Society. His services have been placed at the disposal of the District Planning Officer temporarily and as stop-gap arrangement till further orders by the Secretary of District E-Governance Society-cum-SDM, Dharamshala vide office order dated 07.11.2009, the copy of which is Ex. RW2/G. Smt. Suman Bala is an employee of the DOEACC SOCIETY, who is working in the planning wing on Out-sourcing basis. Shri Gautam Chand, District Planning Officer,

Kangra at Dharamshala (RW2) has categorically stated that no new person has been appointed in his department/branch by the respondent. Therefore, it cannot be said that after the disengagement of the services of the petitioner, new/fresh hands have been engaged by the respondent. At the cost of reiteration, I will like to add that the petitioner was the junior most Data Entry Operator. Therefore, it cannot be said that the provisions of Sections 25-G or 25-H of the Act have been flouted by the respondent.

49. To be fair to the ld. counsel/AR for the petitioner, I will like to highlight that in support of his arguments, he cited the below mentioned rulings:-

- i) Smt. Parimala vs. Banking Service Recruitment Board and Ors., 2001 LLR 868 (Karnataka).
- ii) Electronics Corporation of India vs. G. Muralidhar, 2001 LLR 597 (SC).
- iii) Kerala Water Authority and Surendran, [2007 (112) FLR 772] (Kerala).

Smt. Parimala's case lays down that the termination of an employee can be made only by the Appointing Authority.

G. Muralidhar's case deals with the situation where the order of termination of the services of an employee was passed by the appellate authority and not the disciplinary authority.

Surendran's case pertains to a physically challenged person who was appointed against a vacancy. The catena of law laid down in all these authoritative pronouncements does not hold good in view of the facts and circumstances of the present lis.

50. The petitioner was appointed by the respondent i.e. Deputy Commissioner, Kangra at Dharamshala. He has also been removed from service by the latter after observing all the codal formalities.

51. Such being the situation, I have no hesitation to conclude that the retrenchment of the services of the petitioner by the respondent is legal and justified. The claim petition is not maintainable. The petitioner is not entitled to any relief.

52. These issues are decided against the petitioner and in favour of the respondent.

Issue No. 3

53. Not pressed.

Relief (Issue No. 4)

54. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

55. The reference is answered in the aforesaid terms.

56. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

57. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 151/2012

Date of Institution : 29.2.2012

Date of Decision : 08.10.2012

Shri Ram Sai s/o Shri Kangnu Ram, r/o Village Langehar, P.O. Giyun, Tehsil Sarkaghat,
Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.
. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D. A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Ram Sai s/o Shri Kangnu Ram, Village Langehar, P.O. Giyun, Tehsil Sarkaghat, Distt. Mandi, by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent in the year 1998. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers

working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent.

At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on the muster roll in the year 1998 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was

also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 14.6.2012, following issues were struck:-

1. Whether the termination of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? . . . OPP.
2. Whether the reference is not maintainable in the present form? . . . OPR.
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? . . . OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . . . OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . . OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Ram Sai stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the

petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent. In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1998 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of reemployment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs. 50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

18. Not pressed.

Issue No. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 44/2012

Date of Institution : 02.01.2012

Date of Decision : 08.10.2012

Shri Ravi Dass s/o Shri Harji Ram, r/o Village Jangel, P.O. Kot, Tehsil Sarkaghat, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D. A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Ravi Dass s/o Shri Harji Ram, Village Jangel, P.O. Kot, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 01.01.1999. He worked as such up-to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned

Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner's) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his coworkers. The Chief Engineer being one of the interested parties and directly related with his (petitioner's) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon'ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner's) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- “i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority-cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.01.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 13.6.2012, following issues were struck:-

1. Whether the termination of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? . . . OPP.
2. Whether the reference is not maintainable in the present form? . . . OPR.
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? . . . OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . . . OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . . OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 :	Yes
Issue No. 2 :	Not pressed
Issue No. 3 :	No
Issue No. 4 :	Not pressed.
Issue No. 5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Ravi Dass stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

11. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

12. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

13. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

14. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

15. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.01.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex. RW1/D, w.e.f. 08.7.2005.

16. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

17. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the

respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

18. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

19. This issue is decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

20. Not pressed.

Issue No. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 6)

25. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 23/2012

Date of Institution : 02.1.2012

Date of Decision : 08.10.2012

Smt. Sarla Devi w/o Shri Desh Raj, r/o Village Dadwal, P.O. Sidhpur, Tehsil Sarkaghat,
District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat,
District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D. A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Sarla Devi w/o Shri Desh Raj, r/o Village Dadwal, P.O. Sidhpur, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent w.e.f. December, 1998. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for

short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. December, 1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers

has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs. 50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.4.2012, following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? . . . OPP.
 2. Whether the reference is not maintainable in the present form? . . . OPR.
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? . . . OPR.
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . . . OPR.
 5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? . . . OPR.
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 :	Yes
Issue No. 2 :	Not pressed
Issue No. 3 :	No
Issue No. 4 :	Not pressed.
Issue No. 5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Smt. Sarla Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 02.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. December, 1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 02.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This

shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of reemployment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

18. Not pressed.

Issue No. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 4/2012

Date of Institution : 02.1.2012

Date of Decision : 08.10.2012

Smt. Shakuntla Devi w/o Shri Panjak Ram, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat,
District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat,
District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D. A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Shakuntla Devi w/o Shri Panjak Ram, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 02.12.1998. She uninterruptedly worked as such upto 07.7.2005. On 08.7.2005, her services were disengaged

by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 02.12.1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking

recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 14.6.2012, following issues were struck:-
 1. Whether the termination of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? . . . OPP.
 2. Whether the reference is not maintainable in the present form? . . . OPR.
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? . . . OPR.
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . . . OPR.
 5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? . . . OPR.
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 :	Yes
Issue No. 2 :	Not pressed
Issue No. 3 :	No
Issue No. 4 :	Not pressed.
Issue No. 5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Smt. Shakuntla Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 02.12.1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and

his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of reemployment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

18. Not pressed.

Issue No. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 662/2008

Date of Institution : 29.10.2008

Date of Decision : 12.10.2012

Shri Sher Singh s/o Shri Chuhhad Ram, r/o VPO Sainthal, Tehsil Joginder Nagar, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPSEB Electrical Division, Joginder Nagar, Distt. Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Abhishek Lakhanpal, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether Non-Regularization of services of Sh. Sher Singh s/o Shri Chuhhad Ram as T-mate by the Executive Engineer, HPSEB Electrical Division Joginder Nagar, Distt. Mandi, (H.P.) alongwith his juniors w.e.f. Year, 2002 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged as a daily waged beldar on the muster roll by the respondent w.e.f. 10.2.1993. He worked uninterruptedly as such up-to 20.7.2000 in Electrical Sub Division Chauntra.

S/Sh. Dan Singh, Om Chand, Sher Singh s/o Birsu Ram, Balkrishan, Hans Raj, Dila Ram, Kali Dass, Hari Dev, Rajinder Singh, Jivan Prakash, Vinod Kumar, Shambu Ram, Chand Kumar, Amin Chand, Charan Dass, Ramesh Kumar, Lekh Ram, Suresh Kumar, Roshan Lal and Rajinder Singh also worked with him (petitioner) till 20.7.2000. On the next day i.e. 21.7.2000, his services were illegally terminated by the respondent. He raised an industrial dispute which was referred by the appropriate Government to the Hon'ble Labour Court-cum-Industrial Tribunal, Shimla for adjudication. Such reference was registered as Reference No.325/2002. Thereafter, Reference No.325/2002 was transferred to this Court and the same was registered as RBT No.326/2004. The reference was answered by this Court on 03.10.2005. The termination order dated 21.7.2000 was held to be wrong and illegal. It was held by this Court that he (petitioner) is entitled to the reinstatement on the same terms and conditions on which he was working prior to his illegal disengagement with all consequential service benefits including seniority. The respondent was also directed to pay him the back wages to the extent of 50%. Pursuant to the Award dated 03.10.2005 pronounced by this Court he was re-engaged by the respondent in the year 2006 and paid the back wages. The persons named above have been regularized by the respondent in the year 2002 as work-charge/regular T-mates in the regular pay scale as fixed by the Himachal Pradesh State Electricity Board (HPSEB). All other allowances as applicable to the similarly situated Government employees are also being paid to S/Sh. Dan Singh and Om Chand etc. S/Sh. Dan Singh, Om Chand and others are junior to him. He (petitioner) is also entitled to the regularization from the date the status of work-charge/regular T-mates has been accorded to his juniors. His services have been regularized as work-charge/regular T-mate in the regular pay scale by the respondent w.e.f. 12.5.2008 and he is still working in the said capacity. After his reinstatement, he sent a representation dated 25.9.2006 to the respondent for his regularization from the earlier date, but in vain. Thereafter, the instant industrial dispute was raised by him per demand notice dated 25.11.2006. The act and conduct of the respondent not to regularize him and provide all consequential service benefits from the date his juniors have been regularized is in contravention of the recruitment rules and is violative of the principles of natural justice.

As such, as is apparent from the prayer clause of the petition/claim petition, the petitioner has claimed the following relief(s) in this case:-

- i. The Hon'ble Court kindly be determine the facts of the case and ordered to be regularized the services of applicant from the date of juniors have been regularized.
- ii. The Hon'ble Court kindly be ordered to grant the back arrear along with all consequential service benefits along with annual increment from 2003 to onwards to the applicant.
- iii The Hon'ble Court further order to fixed to applicant in the T-Mate seniority of work-charge/regular employees before the juniors".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the HPSEB is a body corporate incorporated under the statute having perpetual succession and common seal. It has the power to acquire and hold both moveable and immovable property. The HPSEB can sue and be sued in its name. He (respondent) is merely a functionary of the HPSEB. Since HPSEB has not been joined as a party to the petition, the same is bad for non-joinder of the necessary parties and mis-joinder of the parties. The petition is time barred. The petitioner has no cause of action. The persons namely Sh. Dan Singh etc. against whom the petitioner has instituted the case have not been made as parties to the petition. For this reason, the claim petition deserves rejection. The petition is not maintainable. It is hit by the doctrine of res-judicata.

On merits, it has not been specifically denied that the services of the petitioner were engaged as a daily waged beldar on the muster roll w.e.f. 10.2.1993 and he (petitioner) was removed from service on 21.7.2000. Such controversy has already been decided by this Court as per Award passed in Reference No. (RBT 326/2004). S/Sh. Dan Singh and Om Chand etc. were appointed during the year 2002 as work-charged T-mates as per the policy of the Government/Board. The petitioner was not on the rolls of the Board at that time. He has been appointed as a work-charged T-mate as per the policy of the Government/Board vide order dated 09.5.2008. The fact that the services of the petitioner were re-engaged in the year 2006 in obedience to the Award dated 03.10.2005 passed by this Court has not been disputed. The demand notice served by the petitioner was duly replied. Back wages have already been paid to the petitioner as per the order of the Court. His services have been regularized as T-mate work-charged considering his date of engagement on daily wage basis as 10.2.1993. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been owned that the persons whose names have been mentioned in para No. 2 of the claim petition were appointed in the year 2002 as work-charge T-mates as per the policy of the Government and he (petitioner) was not on the rolls of the respondent/department at that time. In the year 2002 his case for reinstatement was pending before the Court which was decided on 03.10.2005. On the basis of the Award passed by the Court, his services were reinstated in the month of February, 2006. He was also paid the back wages amounting to Rs.59,000/- approximately. The persons whose names have been disclosed in para No. 2 of the claim petition are/were junior to him when their services were regularized by the respondent in the year 2002. He (petitioner) is also entitled to the regularization from the date his juniors have been regularized as work-charge T-mate in the pay scale of Rs.2720- 4775/-.

5. Per order dated 06.01.2010, following issues were struck by one of my ld. Predecessors:

1. Whether the petitioner was entitled to regularization of the services from the year 2002 as alleged? . . . OPP.
2. If the issue 1 is proved, what relief other than the regularization of services from the year 2002 the petitioner is entitled to? . . . OPP.
3. Whether the present matter is hit by the principles of resjudicata? . . . OPR.
4. Whether the claim petition is not maintainable? . . . OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. In support of their arguments, the ld. AR and counsel for the petitioner have cited a ruling titled as Daya Nand Verma vs. State of Himachal Pradesh and another, Latest HLJ 2010 (HP) 1349.

I have scanned this authority. It was held in Daya Nand's case that a senior employee cannot be paid less than the junior when there was parity of pay scale in the feeder category. The same is not the situation in the present lis.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No
 Issue No. 2 : Redundant
 Issue No. 3 : Not pressed
 Issue No. 4 : Yes
 Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

9. The petitioner Shri Sher Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that whatever dispute existed between him and his employer the same has been adjudged by the Court in the previous litigation. From the year 2008 onwards he is serving as a work-charge Tmate. He admitted that from the year 1993 to 2000, he did not complete 240 days of work in any year of his employment. Shri Dan Singh etc. were junior to him and also did not complete 240 days of work. He denied that no person junior to him has been engaged as a work-charged employee and he has given a phoney statement.

10. Conversely, Shri Parvesh Thakur, Additional Superintending Engineer, HPSEB Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by him. In his cross-examination, he admitted that the services of the petitioner were initially engaged on 10.2.1993. He was reinstated as per the Award Ex. PW1/D pronounced by the Court. He admitted that in the seniority list Ex. RW1/B, the name of Shri Chand Kumar appears at serial No.41 and he was initially appointed on 06.6.1994. Shri Chand Kumar was given work-charge status w.e.f. 14.11.2002. He denied that the workmen whose names figure at serial No. 41 to 46 of the seniority list (Ex. RW1/B) are junior to the petitioner. Self stated, the petitioner did not work for 240 days in a few years of his engagement. He denied that he is not speaking the truth.

11. Ex. PW1/B is the copy of the demand notice dated 25.11.2006 served upon the respondent by the petitioner.

12. Ex. PW1/C is the seniority list of daily wagers of the office of the respondent. The name of the petitioner is there at serial No. 3.

13. Ex. PW1/D is the copy of the Award dated 03.10.2005 rendered by this Court in Reference No. 325/2002 (RBT No.326/2004) titled as Sher Singh vs. The Executive Engineer, HPSEB, Joginder Nagar.

14. Ex. RW1/C is the copy of the memorandum dated 09.5.2008 issued by the respondent. It depicts that the petitioner was offered the post of T-mate purely on work-charge basis "from the date of appointment or on or after 31.3.1998 which ever is inter".

15. Mark-D is the mandays chart relating to the petitioner.

16. Exts. P1 to P6 are the mandays charts of S/Sh. Dang Singh, Chand Ram, Suresh Kumar, Ram Dass, Ramesh Chand and Nihal Chand, respectively.

17. It is the admitted case of the parties that the services of the petitioner were initially engaged as a daily waged beldar on 10.2.1993 and he worked as such up-to 20.7.2000. The version of the petitioner is that on 21.7.2k, his services were wrongly and illegally dispensed with by the respondent. The said fact has been denied by the latter. Admittedly, the retrenchment order which was passed by the respondent in the month of July, 2000 has already been set aside by this Court per Award dated 03.10.2005, the copy of which is Ex. PW1/D. The claim petition preferred by the petitioner was allowed. Para No.15 relating to the relief clause of Ex. PW1/D reads thus:-

“As a result of my findings on the aforesaid issues, it is held that the termination of the services of the petitioner is illegal and un-justified, therefore, the petitioner is held entitled for his reinstatement on the same terms and conditions in which he was working prior to his illegal disengagement with all consequential service benefits from the date of illegal disengagement with back wages to the extent of 50%, with seniority. The respondent is directed to re-engage the petitioner within 90 days from the date of announcement of this award, failing which the petitioner shall be entitled to interest on the awarded back-wages at the rate of 9%. Having regard to the facts and circumstances of the case, and the manner in which the petitioner was disengaged and the petitioner has to face the relentless litigation I am of the considered view, that the petitioner is also entitled for a lump sum amount of Rs.2,000/- as litigation expenses. The award is answered accordingly”.

18. The petitioner (PW1) in his cross-examination admitted that during the period of his employment from the years 1993 to 2000, he did not complete 240 days of work in any year of his engagement.

19. Ld. AR and counsel for the petitioner have contended that Shri Dan Singh etc. are/were junior to the petitioner. They too, did not complete the criteria of 240 days of work as is evident from the mandays charts Exts. P1 to P6. Despite the said fact, Shri Dan Singh etc. were granted the work-charge status in the year 2002 because of which the petitioner is also entitled to the regularization of his services and get work-charged status from the year 2002 onwards as he has been discriminated.

20. It is well known that the Government of Himachal Pradesh has framed various policies for the regularization of the services of its employees from time to time. Of course, for the purpose of regularization a workman is required to fulfill certain conditions/criteria as contained in the policy. A person can be regularized only when the post is available. Otherwise, an employee is given the work-charge status in which he draws/gets he pay scale of a regular employee. There is no denial of the fact that from the year 2008 onwards the petitioner is working as a regular/work-charge T-mate in the regular pay scale.

21. The admissions made by the petitioner (PW1) go to show that he did not fulfill the criteria for the regularization of his services from the year 2002 because of which he was not given the work-charge status in that year. Simply because the persons junior to the petitioner were given the said benefit in the year 2002 in spite of the fact that they did not complete the criteria of 240 days of work, the same will not come to the rescue of the petitioner, for the reason that granting the regular/work-charge status to the petitioner from the year 2002 will perpetuate the wrong which is not permissible under the law.

22. That being so, I have no hesitation to conclude that the petitioner is not entitled to the regularization of his services from the year 2002 as claimed.

23. This issue is decided against the petitioner and in favour of the respondent.

Issue No. 2

24. Taking into account my findings on issue No.1, this issue has become redundant. Discussing the same at length will serve no fruitful purpose. Rather, it will be like 'flogging a dead horse'.

25. This issue has been answered as such.

Issue No. 3

26. Not pressed.

Issue No. 4

27. In view of my findings on issues No. 1 above, it is held that the claim petition is not maintainable.

28. This issue is also decided against the petitioner and in favour of the respondent.

Relief (Issue No. 5)

29. As a sequel to my findings on the above issues, the present claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 445/2008

Date of Institution : 13.6.2008

Date of Decision : 12.10.2012

Shri Sohan Lal s/o Shri Sona Ram, r/o Village Gadsoul, P.O. Badhasu, Tehsil & Distt.
Mandi, H.P. . . *Petitioner.*

Versus

The Managing Director, Hotel Le Grand/General Manager, Hotel Le Grand Pvt. Ltd. H.H.
Mall Road, Manali, Distt. Kullu, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. K.G. Thakur, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Sh. Sohan Lal s/o Shri Sona Ram by the Managing Director/General Manager, Hotel Le Grand Pvt. Ltd. N.H. Mall Road, Manali, Distt. Kullu, H.P. w.e.f. 25.7.2006 without complying with the provisions of the ibid Act, is legal and justified? If not, what amount of back wages, seniority and past service benefits and compensation the above workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the management of the respondent/hotel at the time of its construction in the year 1992. He was appointed as a Clerk and promoted from time to time. He served the respondent/hotel up-to 24.7.2006 without any break. Lastly, he was discharging his duties as an Accountant. From the year 1992 to 2003, one Mr. Sanesh Gupta was the Managing Director of the hotel and running the same. In the year 2003, the hotel was taken over by Mr. Pradeep Gupta, Chairman, M/s. Pradeep Resorts Pvt. Ltd., Delhi-35 with all assets, employees and liabilities. On 25.7.2006, his (petitioner's) services were terminated by the respondent by a verbal order. Before his removal from service neither any show cause notice was given to him nor he was charge-sheeted for the alleged misconduct if any. Even no inquiry was conducted against him. One month pay in lieu of the notice period and retrenchment compensation were also not paid to him. He had completed 240 days of work in each and every calendar year of his employment. Immediately, after his termination, he served a demand notice dated 29.8.2006 upon the respondent/management. The copy of the demand notice was forwarded to the Labour –cum-Conciliation Officer, Mandi who initiated the conciliatory proceedings, but in vain. After his termination, new/fresh hands have been engaged by the respondent. He was not given an opportunity of re-employment. He worked to the satisfaction of his superiors from the year 1992 to the date of his wrongful termination. He was discharging his duties as per the instructions of the hotel management from time to time. When he was appointed by the respondent he was being paid Rs.2500/- per month as salary. The pay was also enhanced time and again and lastly he was getting the salary of rs.5,000/- per mensem. Various Acts like Minimum Wages Act, 1948, Payment of Wages Act, 1936, Industrial Disputes Act, 1947 ('the Act' for short), Employees Provident Fund Act, 1948, Bonus Act, 1965, Gratuity Act, 1972, HP Shop and Commercial Establishment Act, 1969 and National Festival Holidays, Casual and Sick Leave Rules, 1969 are applicable to the respondent. The benefits w.e.f. 1992 till the date of his termination have not been extended to him by the respondent under the aforesaid Acts. He is entitled to the payment under the above quoted Acts as under:-

- “(i) The applicant is entitled Rs.63180/- as Provident Fund + 12% interest.
- (ii) The applicant is entitled Bonus @ 8.33/- Rs.45898/- + 9% interest.
- (iii) The applicant is entitled Balance Leave Encashment Rs.12500/- only.
- (iv) The applicant is entitled balance pending Salary for the period from 01.07.2006 to 24.07.2006 @ 5000/- per month Rs.4000/- only”.

His services have been wrongly, illegally and arbitrarily terminated by the respondent in violation of various provisions of the Act. From the date of his disengagement he is unemployed.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal termination order dated 25.07.2006 and directed to respondents/managements to reinstatement the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits till the date of his reinstatement.
- (ii) The Hon’ble Court kindly be determine the past service benefits as mentioned above in Para No.8 lesser and higher and directed to respondents/managements to pay the same in the favour of applicant along with interest with in period of 90 days failing a compound interest @ 15% may kindly be granted in the favour of applicant.
- (iii) The Hon’ble Court again directed to managements to pay the litigation cost amounting to Rs.5000/- in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition deserves rejection as the petitioner/workman has not approached the Court with clean hands. He has suppressed the material facts from the Court. The petitioner was an old employee of the hotel. When the company/hotel was taken over by the new management in the year 2004, it was decided to retain the petitioner in service. In the 1st week of July, 2006 when the petitioner was asked to account for a sum of Rs.31,40,000/- withdrawn by him from the account of the management and income of the hotel as well as the goods which were missing from the hotel, he failed to account for the same. Thereafter, he left the job and never turned up. The petitioner then started threatening him (respondent). Various written complaints were lodged by the management of the hotel with the police. The petitioner has misrepresented himself. The claim petition is false. He has misappropriated the funds and goods of the company/hotel like furniture, crockery and TVs etc. The funds have been invested by him (petitioner) in the other hotels. He is also using the furniture and TVs etc of the company/management in the other hotels. The petitioner has no locus standi to sue.

On merits, it has been denied for want of knowledge that the services of the petitioner were initially engaged as a Clerk in the year 1992 and he was promoted from time to time by the previous management. He (respondent) took over the management of the company/hotel in the month of April, 2004. He has no knowledge regarding the affairs prior to the year 2004. It has been disputed that the petitioner worked up-to 24.7.2006. He infact left the job voluntarily in the first week of July, 2006. The petitioner was not sincere and faithful towards his duties. He embezzled the huge money and goods of the hotel/management. The services of the petitioner were never terminated as alleged. Therefore, the question of issuing any show cause notice to him or paying the retrenchment compensation does not arise. The work and conduct of the petitioner was not up-to the mark. The petitioner himself left the job due to his unlawful and illegal acts. It stands admitted that from April, 2004 onwards the petitioner was being paid Rs.5000/- each month as salary. All the benefits as per various provisions of different Acts were duly extended to the petitioner. When the present management took over the hotel, its electricity had already been disconnected due to the non payment of the bills as per directions issued by the Pollution Board. The hotel was not being run regularly. It usually remained closed due to the lack of proper care and management. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been denied that he left the job willingly in the 1st week of July, 2006. Instead, he worked up-to 24.7.2006. He has not mis-conducted himself by doing the misappropriation as alleged. No FIR was lodged against him by the respondent/management. He did not withdraw Rs.31,40,000/- from the accounts of the management and the hotel as alleged. He did not abandon the job.

5. Per order dated 28.10.2010, following issues were struck by my Id. Predecessor:-

1. Whether the termination of the petitioner w.e.f. 25.7.2006 is in violation of the provisions of Sections 25-F and 25-H of the I.D. Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable as alleged. If so, its effect? OPR
3. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Partly Yes Partly No

Issue No. 2 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Sohan Lal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that when he joined the service, Shri Saneh Gupta was the owner of the hotel. The present owner Shr. Pradeep Gupta purchased the hotel in the year 2004. He denied that Shri Pradeep Gupta is a resident of Delhi. Self stated, Shri Pradeep Gupta owns a house in Delhi and is putting up at Manali. He denied that the entire management of the hotel used to be looked after by him. He also denied that Shri Pradeep Gupta used to give him blank signed cheques whereafter he used to withdraw the money from State Bank of India. He admitted that from 10.2.2006 to 06.7.2006 he might have drawn Rs.31,40,000/- from the State Bank of India. He denied that when Shri Pradeep Gupta (respondent) asked him to account for the said money, he failed to do the same. He even denied that he threatened Shri Pradeep Gupta to do away with his life. He admitted that Shri Pradeep Gupta had lodged a complaint with regard to the threat advanced to him with the Superintendent of Police, Kullu. Self stated, he was interrogated by the police. He admitted that in the year 2004, the power/electricity of the hotel was disconnected due to non payment of the bill and the hotel remained shut for a long time. Volunteered, the electricity bill was to be paid by the owner of the hotel. He denied that all the bills of the hotel including the eatables and water etc. used to be paid from the payment received from the guests staying in the hotel. He admitted that in the year 2003-2004 he purchased Vaishali Hotel which was being run by his son. He denied that he carried the TVs etc. of the hotel in the absence of Shri Pradeep Gupta to Vaishali Hotel which was bought by him. He admitted that Mukesh Hotel and Le Grand hotel (respondent) are separated by a wall. He (PW1) took Mukesh hotel on lease. He denied

that while sitting in Le Grand hotel he used to send the customers to Mukesh hotel. He also denied that when he failed to account for Rs.31,40,000/-, he left the service voluntarily. He controverted that the instant claim petition has been preferred by him to harass Shri Pradeep Gupta so that the latter does not institute a recovery suit against him.

9. Conversely, Shri Pradeep Gupta (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that he does not know that the petitioner is serving the hotel since the year 1992. The hotel was taken over by him (RW1) in the year 2004. He admitted that the petitioner served up-to the month of July, 2006. He denied that the services of the petitioner were dispensed with in the month of July, 2006. Volunteered, the petitioner left the service of his own. He (RW1) is residing with his family members at Delhi. He had given blank signed cheques to the petitioner who used to operate the bank account in his absence. When the petitioner was asked to account for the money withdrawn by him, he left the job. No notice was served upon the petitioner calling upon him to resume his duties after he left the service. Neither the petitioner was charge-sheeted nor an inquiry was conducted against him. Self stated, he was threatened by the petitioner because of which he (RW1) lodged complaints with the higher authorities and the police. The petitioner stole the goods of the hotel in his (RW1's) absence. A complaint in this regard was also made. He (RW1) had served a notice on the petitioner asking him to account for the money and return the stolen articles. The copies of the complaints and notice have not been produced by him in the Court. He denied that the reply to the notice was sent by the petitioner. Acknowledgement Ex. PA bears his signatures. No FIR was got registered against the petitioner. He admitted that he and the petitioner were called by the DSP, Manali, who conducted a detailed inquiry. He admitted that prior to July, 2006, no notice was served upon the petitioner regarding the alleged embezzlement and threat. The petitioner used to look after the affairs of the hotel in his absence. He denied that the controversy arose between him and the petitioner when the latter was not paid the provident fund and bonus etc. No notice and retrenchment compensation were given to the petitioner. Till date he (RW1) has not preferred any suit against the petitioner for recovery of the embezzled amount. He denied that the petitioner was removed from service in a wrongful manner and he is telling the lies.

10. Ex. RW1/B is the statement of account issued by the State Bank of India, Manali Branch relating to M/S Hira Moti Hotels Resorts Pvt. Ltd. It unfolds that on various occasions money was withdrawn from the account by Shri Sohan Lal (petitioner). Ex. PW1/B is the copy of the demand notice u/s 2A of the Act.

11. It has not been specifically denied by the respondent that the services of the petitioner were initially engaged by the previous management of the hotel in the year 1992 as a Clerk. It is the admitted case of the respondent that he took over the hotel/company in the month of April, 2004 and the petitioner served continuously up-to the month of July, 2006. The version of the petitioner is that he served the respondent/hotel up-to 24.7.2006. The respondent has maintained that the petitioner left the job voluntarily in the first week of July, 2006. There is nothing on the record to establish that the petitioner served only up-to the first week of July, 2006 as claimed by the respondent.

12. The petitioner has maintained that on 25.7.2006, his services were wrongly and illegally terminated by the respondent by a verbal order. While denying the said fact the respondent has pleaded that when the petitioner was asked to account for the money withdrawn by him from the bank and the missing articles from the hotel, he stopped coming to the hotel and abandoned the job.

13. The respondent in his reply nowhere mentioned that he is residing with his family members at Delhi and in his absence all the affairs of the hotel including the financial transaction were being looked after by the petitioner. Not only this, it has not been pleaded in his reply by the respondent that he had handed over certain signed blank cheques to the petitioner on the strength of which he withdrew the money from the accounts of the hotel and the management in the State Bank of India, Manali Branch. The evidence to that effect led by the respondent being beyond his pleadings cannot be read. Otherwise too, it is an admitted fact that till date no recovery suit has been instituted by the respondent against the petitioner for the refund of the alleged embezzled amount. Even no FIR was got registered against the petitioner by the respondent for the alleged theft or misappropriation of the funds. The copies of the complaints lodged by the respondent against the petitioner have also not been placed/exhibited on the record. Since the material documents have been withheld by the respondent, an adverse inference under Section 14 (g) of the Indian Evidence Act has to be drawn against him.

14. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the service. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty as well as theft and embezzlement. The pleas of abandonment, embezzlement and theft put forth by the respondent are not established.

15. The respondent (RW1) admitted during the cross-examination that the petitioner served the hotel from April, 2004 to July, 2006. This indicates that the petitioner had worked for more than 240 days in a block of 12 calendar months preceding the date of his termination i.e. 25.7.2006 as envisaged under Section 25-B of the Act.

16. Section 25-F of the Act reads thus:-

“25-F. Conditions precedent to retrenchment of workmen.-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

17. There is not even an iota of evidence on the file to show that the mandatory provisions of the above quoted Section were complied with by the respondent before the disengagement of the petitioner. Thus, it can be safely said that the retrenchment of the services of the petitioner by the respondent is illegal and unjustified.

18. The name of the person who was employed by the respondent in place of the petitioner after his disengagement, has not been disclosed by either of the parties. Infact there is no cogent and convincing evidence on the record to show that after the termination of the services of the petitioner, new/fresh hands have been engaged by the respondent. The provisions of Section 25-H of the Act are not attracted in this case.

19. During his cross-examination, the petitioner (PW1) admitted that he had purchased Vaishali Hotel in the years 2003-2004 which was being run by his son. He also admitted that he had taken Mukesh hotel adjoining to Le Grand Hotel (respondent) on lease. This amply demonstrates that the petitioner was not unemployed during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he was not gainfully employed. For these reasons, he is not entitled to the back wages.

20. This issue has been answered accordingly.

Issue No. 2

21. Not pressed.

Relief (Issue No. 3)

22. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 25.7.2006 except back wages. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 572/2008

Date of Institution : 14.7.2008

Date of Decision : 03.10.2012

Shri Suresh Kumar s/o Shri Hardayal Singh, r/o VPO Lehri-Saren, Tehsil Ghumarwin,
Distt. Bilaspur, H.P. . . . *Petitioner.*

Versus

The Block Development Officer, Ghumarwin, Distt. Bilaspur, H.P.

. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D. A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Sh. Suresh Kumar s/o Sh. Hardayal Singh workman by the Block Development Officer Ghumarwin, H.P. w.e.f. 6/2005 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent as a daily waged Takniki Sahayak (Technical Assistant) on 01.7.2002. He was being paid Rs.1200/- per month as wages. His appointment was made as per the notification dated 21st October, 2000 issued by the Department of Panchayati Raj, Govt. of Himachal Pradesh. He served the respondent/department regularly up-to 31st May, 2005. On 1st June, 2005, his services were terminated by the respondent by a verbal order. Neither he was informed about his misconduct, if any, nor any notice was served upon him. After his retrenchment, a new person has been appointed by the respondent. He (petitioner) requested the respondent time and again verbally and in writing to re-engage him, but in vain. Thereafter, in the year 2005, he served a demand notice upon the respondent. The latter has failed to adhere to the principle of ‘last come first go’ which amounts to unfair labour practice. From the date of his disengagement, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (‘the Act’ for short).

As such, he (petitioner) prays that the termination order dated 01.6.2005 be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and the payment of back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. It has been denied that the services of the petitioner were engaged as a daily wager. Actually, the petitioner was appointed as a Takniki Sahayak in Gram Panchayat, Lehri-Sarel, Tehsil Ghumarwin on contract basis for one year. On the completion of the contract period, the contractual appointment of the petitioner was extended from time to time. The agreement/contract used to be executed between the concerned Takniki Sahayak and the Panchayat Pradhan. The petitioner was being paid the fixed remuneration every month. Nowadays, the services of Takniki Sahayaks are performed by a person selected in the panel. It stands admitted that the services of the petitioner were engaged in accordance with the notification dated 21st October, 2k issued by the Department of Panchayati Raj, Government of Himachal Pradesh. The date of interview was fixed as 20.5.2005 for the selection of the panel of Takniki Sahayaks as per the letter dt. 16/4/05 issued by the Govt. The copy of the said letter was forwarded by him (respondent) to all the panchayats vide letter dated 30.4.2005. The petitioner did not take part in the interviews held on 20.5.2005. His services came to an end on the completion of the

contract period. It was not his (respondent's) duty to inform the petitioner that his services stand terminated. Such information was to be provided to the petitioner by the concerned panchayat. The petitioner has not been removed from service as alleged. Since the petitioner did not participate in the interview for the selection of the panel of the Takniki Sahayaks, he is not entitled to the re-employment etc. The petitioner himself is at fault. He cannot take advantage of his own wrongs. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 13.11.2009, following issues were struck by one of my ld. Predecessors:-

1. Whether the services of the petitioner were terminated by the respondent? . .OPP.
2. If the above issue 1 is proved, whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to?. .OPP.
3. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : No termination ever took place. The petitioner is not entitled to any relief.

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Suresh Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were engaged as a Takniki Sahayak on contract basis. He denied that the agreement was executed on 01.6.2003. Mark-A is the copy of the agreement which took place between him and the respondent. He denied that the agreement was inked between him and the concerned panchayat as well as his services were engaged by the panchayat only. He admitted that Gramt Panchayat, Lehri-Sarel has not been joined as a party to the petition by him. He denied that the appointments of the Takniki Sahayaks are now done from a panel. He also denied that in the year 2005 wide publicity was given by the respondent for the formation/selection of a panel for appointment as a Takniki Sahayak. He did not move an application in the year 2005 for being engaged as Takniki Sahayak. He denied that the contract used to be for one year only and on the completion of the contract period, his services used to come to an end automatically. Mark-A bears his signatures. He admitted that he was being paid the fixed remuneration amounting to Rs.1200/- per mensem. He denied that he did not appear in the

interview as per the letter Mark-B for being selected as Takniki Sahayak. He also denied that for this reason, he is not entitled to the reemployment. He works privately to make both the ends meet. He also owns the agricultural land. He denied that the term of his appointment came to an end on the expiry of the contract period. He refuted that since he did not take part in the interview and was not selected in the panel of Takniki Sahayaks, he is not entitled to the re-engagement etc.

10. Conversely, Miss Ashmita Thakur, Block Development Officer, Ghumarwin (respondent) testified as RW1. In her affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, she corroborated on oath the contents of the reply submitted by her.

In the cross-examination, she admitted that all the Takniki Sahayaks have been engaged as per the letter/notification issued by the Government. She denied that the petitioner served for four years and his services have been dispensed with wrongly. Self stated, the contract period of the petitioner had expired.

11. Ex. RW1/B is the copy of the notification dated 21st October, 2000 issued by the Department of Panchayati Raj, Government of Himachal Pradesh. It depicts that the Gram Panchayats were the appointing authority of Takniki Sahayaks. They were to be paid the honorarium of Rs.1200/- per month. The appointment was to be on contract basis for a period of one year initially. The contract could be extended by one year at a time if the panchayats had adequate resources to pay the honorarium and the performance of the Takniki Sahayak is/was satisfactory.

12. Ex. RW1/C is the copy of the agreement dated 21st May, 2003 which was entered into between the petitioner and Pradhan, Gram Panchayat, Lehri-Sarel. It unfolds that the petitioner was appointed as a Takniki Sahayak on contract basis from 01.6.2003 to 30.5.2004.

13. Ex. RW1/D is the copy of the letter dated 16th April, 2005 written by Deputy Director, Panchayati Raj, Government of Himachal Pradesh to all the Block Development Officers etc. As per this letter, three dates (including 20.5.2005) were fixed in the entire State for holding the interviews for preparing the panel of Takniki Sahayaks. It was also directed that the fact that interviews will be held for selection as Takniki Sahayaks should be given wide publicity. The date of interview for Ghumarwin Block was fixed as 20.5.2005.

14. Ex. RW1/E is the copy of the letter dated 30.4.2005 written by the respondent to the Pradhans of all the panchayats in Development Block, Ghumarwin regarding the holding of the interviews for the selection of the Takniki Sahayaks.

15. Exts. RW1/F and G are the copies of the press note and newspapers cutting showing that wide publicity was given by the respondent regarding the interviews to be held for the posts of Takniki Sahayaks in different panchayats.

16. Ex. RW1/H is the copy of the notification dated 18.2.2005 issued by the Department of Panchayati Raj, Government of Himachal Pradesh. It reveals that the notification dated 21st October, 2000 (Ex. RW1/B) was superseded. A new scheme was formulated for engaging the Technical Assistants for the Gram Panchayats. All the persons appointed under the scheme of 21/10/2000 (Ex. RW1/B) were also eligible for being engaged as Technical Assistants. A Selection Committee comprising of Chairman, Panchayat Samiti, AE (Dev) and Block Development Officer/Executive Officer, Panchayat Samiti was formed. The Block Development Officer is/was required to invite the applications from the persons possessing necessary qualifications. On the receipt of the applications within the prescribed time the date of interview was to be fixed by the concerned Block Development Officer. The Selection Committee was to conduct the interview on

the date time and place already notified. The marks were to be given as per the distribution provided in the notification Ex. RW1/H. A panel of Takniki Sahayaks was to be drawn at the Block level. One Takniki Sahayak was to be there for two Gram Panchayats of the Block. The Gram Panchayats were free to take the services of any of the Takniki Sahayaks from the panel so drawn. The panel was to be valid for a period of one year. For reasons to be recorded in writing, a candidate could be removed from the panel before the expiry of the term by the Block Development Officer concerned with the consultation of the Selection Committee.

17. The petitioner has not placed on the record any documents evidencing that his services were engaged as a daily wage Technical Assistant by the respondent on 01.7.2002 on payment of the monthly salary of Rs.1200/- and he worked continuously as such up-to 31.5.2005. 18. In para 2 of the statement of claim/demand, the petitioner has pleaded that his services were engaged by the respondent as per the notification dated 21st October, 2000 (Ex. RW1/B) issued by the Department of Panchayati Raj, Government of Himachal Pradesh. Perusal of this notification makes it crystal clear that in case of the Takniki Sahayaks, the appointing authority was the Gram Panchayat and the appointment was to be on contractual basis for a period of one year at the first instance. The petitioner (PW1) in his cross-examination admitted that the agreement Mark-A bears his signatures. Mark-A corresponds to Ex. RW1/C. Legally speaking, a person signing the document is presumed to agree to its contents.

19. Browsing of Mark-A and Ex. RW1/C clarifies that the services of the petitioner were engaged as a Takniki Sahayak in Gram Panchayat, Lehri-Sarel from 01.6.2003 to 30.5.2004 only. As per Ex. RW1/B, the petitioner was to be paid the honorarium of Rs.1200/- each month. That being so, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that he served as Technical Assistant from 01.7.2002 to 31.5.2005 on payment of Rs.1200/- every month as salary.

20. The agreement Mark-A (Ex.RW1/C) had taken place between the petitioner and the Pradhan of concerned Gram Panchayat i.e. Gram Panchayat Lehri-Sarel, Tehsil Ghumarwin. The petitioner was never appointed by the respondent as claimed. There is nothing on the record to show that the services of the petitioner were terminated by the respondent. No relationship of employer and employee exists between the parties. Gram Panchayat, Lehri-Sarel is not a party to this petition.

21. The evidence available on the record goes to show that the notification dated 21st October, 2000 (Ex. RW1/B) was superseded by issuing the notification dated 18.2.2005 (Ex.RW1/H). A Selection Committee was formed to select a panel of Takniki Sahayaks for the Gram Panchayats. The mode of selection was also prescribed by the Government. As per this notification and the letter dated 16th April, 2005 (Ex. RW1/D) wide publicity was given by the respondent for the selection of the panel of Takniki Sahayaks by issuing the press note Ex. RW1/F. Various newspapers published the news item to the effect that the interviews will be held on the due dates for the appointments of Takniki Sahayaks in the Panchayats. Admittedly, the petitioner never applied for the said post as per the notification dated 18.2.2005 (Ex.RW1/H). He did not participate in the interviews conducted by the Selection Committee. Since the petitioner did not take part in the selection process, I fail to understand as to how it lies in his mouth to canvass that the respondent be directed to re-engage his services as a Technical Assistant. The respondent is/was within his right to appoint a new person in place of the petitioner since he failed to participate in the selection process and did not fulfill the criteria for being appointed as a Takniki Sahayak.

22. The petitioner (PW1) in his cross-examination admitted that he earns his livelihood by doing the private job. He also admitted that he owns the agricultural land. To my mind, the avarice of the petitioner to grab the Government job and money has forced him to file a totally false and baseless claim petition. He is not entitled to any relief.

23. Such being the situation, I have no hesitation to conclude that the services of the petitioner were neither engaged nor disengaged by the respondent. No provision of the Act has been infringed by the respondent. The contractual appointment of the petitioner from 01.6.2003 to 30.5.2004 came to an end with the passage of time. He (petitioner) is not entitled to the re-employment etc.

24. These issues are decided against the petitioner and in favour of the respondent.

Relief (Issue No. 3)

25. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3000/-.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT MANDI)**

Ref No. : 2/2007

Date of Institution : 03.1.2007

Date of Decision : 05.10.2012

Shri Tej Pal s/o Shri Jayoti Ram, r/o Village Barineri, P.O. Bhutti, Tehsil & District Kullu,
H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D., Division No.-2, Kullu, District Kullu, H.P.
. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Bhuvneshwar, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D. A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Sh. Tej Pal s/o Shri Jayoti Ram workman by the Executive Engineer, H.P.P.W.D., Division No.2, Kullu, H.P. w.e.f. 08.03.99 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged as a daily waged beldar on muster rolls by the respondent in the month of June, 1997. He worked as such up-to 6th September, 1998, on which date his services were terminated by the respondent by a verbal order. Thereafter, he was re-engaged as a beldar on daily wage basis by the respondent on 14th December, 1998. He continuously worked as such up-to 07.3.1999. On the next day i.e. 08.3.1999, his services were dispensed with by the respondent by passing a verbal order. Before the termination of his services neither any notice was served upon him nor the retrenchment compensation was paid. He completed 240 days of work in a block of 12 calendar months preceding the date of his retrenchment. While removing him from service, the persons junior to him namely S/Sh. Krishan s/o Tek Ram and Kahan Singh s/o Dagu Ram were retained in service by the respondent. He (petitioner) preferred an application bearing No.1169/99 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal, Shimla. Such original application was disposed of by the Hon'ble Tribunal on 20.12.2004. He (petitioner) was directed to approach the appropriate Court/Forum for the redressal of his grievances. After his termination new persons have been engaged by the respondent. He was not given an opportunity of re-employment. Permanent work is available with the respondent/department. His services have been terminated by the respondent malafidely in contravention of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short).

As such, he (petitioner) prays that the retrenchment order dated 08.3.1999 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner has no cause of action. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it stands admitted that the relationship of employer and employee exists between the parties. It has been owned that the services of the petitioner were initially engaged as a daily waged beldar in the month of June, 1997. The services of the petitioner were not terminated in the month of September, 1998 as alleged. Actually, the petitioner used to work intermittently as per his convenience and sweet will. Work for the entire month of September, 1998 was provided to the petitioner. After working for six days only, the petitioner left the job voluntarily on 07.9.1998. After that, the petitioner reported for work in the month of December, 1998. His mandays chart is annexure R1. The petitioner did not work for 240 days as claimed. Therefore, his disengagement is legal and valid. Apart from it, muster roll for the whole month of March, 1999 was issued in favour of the petitioner. He worked only up-to 07.3.1999 and thereafter absented from duty. Muster rolls were issued in the name of the petitioner continuously up-to the month of October, 1999, but he did not turn up-to work. This indicates that at no stage he (respondent) had the intention to disengage

the services of the petitioner. He infact abandoned the job willingly. The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2005. Shri Kahan Singh s/o Sh. Dagu Ram never worked with him (respondent). Since the petitioner voluntarily left the service, he is precluded from claiming the parity with the workman Sh. Krishan s/o Shri Tek Ram who served continuously. No new/fresh hands have been engaged. The Government of Himachal Pradesh has imposed a blanket ban on the engagement of daily waged workmen except the appointments on compassionate grounds. Since the petitioner left the service of his own, he is not entitled to any protection under the Act. He is gainfully employed as an agriculturist. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he never abandoned the job.

5. Per order dated 03.5.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08.3.1999 is illegal and unjustified as alleged? . . . OPP.
2. Whether the petitioner has a cause of action? . . . OPP.
3. Whether the petition is not maintainable in the present form? . . . OPR.
4. Whether the petition is bad on account of delay and laches as alleged. If so, its effect? . . . OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes
 Issue No. 2 : Yes
 Issue No. 3 : Not pressed
 Issue No. 4 : No
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Tej Pal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that his services were never disengaged by the respondent. He also denied that various messages were sent to him by the respondent to join the duties, but in vain.

10. Conversely, Shri G.C. Gupta, Executive Engineer, HPPWD, Division No.II, Kullu (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the workman Shri Krishan Lal is junior to the petitioner. Self stated, he kept on serving the department regularly. When the petitioner left the service, no notice was given to him to resume the work. Even no inquiry was conducted against him. He denied that the services of the petitioner were terminated in a wrongful manner and he has given a phoney statement.

11. Ex. RW1/B is the mandays chart relating to the petitioner.

12. Exts. RW1/C to L are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and others from time to time.

13. Ex. RW1/M is the mandays chart pertaining to Shri Krishan Lal s/o Sh. Tek Ram daily waged Mate.

14. It is the admitted case of the respondent that the services of the petitioner were initially engaged as a daily waged beldar in the month of June, 1997 and he worked intermittently up-to 07.3.1999. The version of the petitioner is that on 08.3.1999, his services were terminated by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition.

15. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. The respondent (RW1) in his cross-examination admitted that no notice was served upon the petitioner calling upon him to resume the duties after he allegedly left the service. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Not only this, during the cross-examination of the petitioner (PW1) a question was put to him on behalf of the respondent/department that messages were sent to him (petitioner) through the Mate and different labourers to report for work. Strangely, the Mate or anyone of the labourers has not been examined by the respondent to substantiate the said fact. Since material evidence has been withheld by the respondent, an adverse inference under Section 114 (g) of the Indian Evidence Act has to be drawn against him. The plea of abandonment put forth by the respondent is not established.

16. The mandays chart Ex. RW1/B unfolds that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 08.3.1999 as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

17. The respondent (RW1) in his cross-examination admitted that Shri Krishan Lal is junior to the petitioner and is serving under him. The said fact finds support from the mandays charts Exts. RW1/B and M. As per Ex. RW1/B, the date of engagement of the petitioner is 07.6.1997 whereas Ex. RW1/M reveals that Shri Krishan Lal was appointed on 24.7.1997. He is certainly junior to the petitioner. Admittedly, his services were not terminated by the respondent alongwith the petitioner. It can be safely said that the respondent has failed to abide by the principle

of 'last come first go'. His action is violative of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act, a workman need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

18. Such being the situation, I have no hesitation to conclude that the petitioner has a cause of action. His retrenchment is illegal.

19. These issues are decided in favour of the petitioner and against the respondent.

Issue No. 3

20. Not pressed.

Issue No. 4

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. While testifying in the Court as PW1, the petitioner has given his age as 48 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

24. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 5)

25. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.3.1999 except back wages. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 93/2007

Date of Institution : 03.8.2007

Date of Decision : 15.10.2012

Vice President, H.P. State Civil Supplies Corporation (B.M.S.) Employees Union, Mandi,
H.P. . . *Petitioners.*

Versus

3. Managing Director, H.P. State Civil Supplies Corporation Ltd. Kasumpty, Shimla-9

4. Area Manager, H.P. State Civil Supplies Corporation Ltd. Mandi, H.P. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondents : Sh. A.C. Verma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the demand raised by Vice President, H.P. State Civil Supplies Corporation (B.M.S.) Employees Union, Mandi, H.P. through demand notice dated 02.08.04 (Copy enclosed) before the (1) Managing Director, H.P. State Civil Supplies Corporation Ltd. Kasumpty, Shimla-9 (2) Area Manager, H.P. State Civil Supplies Corporation Ltd. Mandi, H.P. is tenable, legal and justified? If yes, what relief of service benefits the aggrieved workmen are entitled as per demand notice? If not, what its legal effects?”

2. The case of the petitioner/union (as set out in the statement of claim/demand) reads thus:-

“1. That the workmen union was raised the demand notice to the above respondent vide their demand charter dated 2/8/04 and the copy of the same were forwarded to the Labour Cum Conciliation Officer, Mandi, and during the conciliation proceeding before the conciliation officer the respondents has not accepted the

demand raised by the union and the report under section 12(4) of the Industrial Dispute sent by the conciliation officer, vide his report No.1343 dated 12/05 and the said case is culminated the present dispute. Copy of the demand notice are annexed herewith as annexure P-1.

2. That Vice President Shri Chaman Lal Presently working in the union as President and has been duly authorized by the working committee of union to served the demand notice and defend the case/Industrial Dispute before the Hon'ble Industrial Tribunal and competent to deal and signed the all documents on the behalf of employees union, where as the H.P. State Civil Supplies Corporation employees union is registered by the Registrar Trade Union Act, 1926 having registration No. 283.

Brief facts of the case as under

1. That the workmen serve Sh. Diwan Chand, Uttam Chand, Kali Dass, Bir Singh, Mast Ram, Sita Ram, Hem Singh, Chaman Lal, Hari Singh, Hans Raj and Kartar Singh are working as regular public distributor Helper in regular pay scale Rs.2520-4140 initial start Rs.2620 per month in the various whole sale, Retail Shop in different place under the Area Manager, District Mandi H.P. and also working in different dates and all the above workmen are discharging their duties in same nature of duties as discharging by the public distributor clerks as like maintaining the case book. Ledger, Daily, Day Book Stock Register, Bank Depositors, Billing, Cash Memo. The above said workmen/employees are discharging their duties independently as per the direction of the Manangement w.e.f. 1/1/1996 or from the date of their regularization the services against the vacant posts of Public Distributors clerks, but the management are not being pay the pay scale of Public Distributors clerks to the above workmen Rs.3120-5160. Hence all the Public Distributors Helpers are entitled the pay scale Rs.3120-5160 w.e.f. 1/1/1996 to onwards where as all the above mentioned employees are discharging their duties as Public Distributors Clerks, hence all the above employees are entitled equal work for equal pay under the article 39 (d) constitution of India. The Managements has not violated the same but violated principle of natural justice.
2. That all the workmen are discharging their duties from 1984 to onwards and presently department has designated to him as Public Distributor Helpers instead of Public Distributor clerks and also working more then 20 years in the post of Public Distributor Helpers and Management has not yet to designated him as Public Distributor Clerks where as all the workmen are honestly discharging/functioning their duties as Public Distributor Clerks against the vacant posts. It is submitted here that Shri Dile Ram who was working as regular Truck Cleaner in the department and has been promoted by the Managements as Public Distributor Clerks and posted to him at Solan vide Letter No.27/89/12974-75 dated 08.10.2001. It is again submitted here that there is no provision in the service rules or By Laws of the corporation to promoted the persons from the Truck Cleaner seniority cadre to Public Distributor Clerks where as only Public Distributor Helpers/Peon are entitled to be promoted as Public Distributors Clerk.
3. That it is categorically submitted here that person who were discharging their duties in the post of Truck Cleaner have been promoted by the Management in the post of Driver, as per service rules of the corporation but the person Mr. Dile Ram

has been promoted in the post of Public Distributor Clerk and same has been violated by the Managements against the (R&P) service rules and same has been violated against the principle of natural Justice. Hence all the above named workmen whose name mentioned in the para No. of the claim petition are entitled to be promoted as Public Distributor Clerks and also entitled the pay scale of Rs. 3120-5160 + others all Consequential service benefits. It is again specifically mentioned here that Shri Dile Ram is Junior to all the above named workmen.

4. That it is submitted here that the seniority list of the Public Distributor Clerk, Public Distributor Helper, Peon and Truck Cleaner are maintaining by the department in different cadre and there is no question to promoted the Truck Cleaner in the post of Public Distributor Clerk. The department kindly be supply the seniority list of all the categories as mentioned with reply.
5. That it is further categorically submitted here that the employees union has been approached to the respondents time and again and raised the said demands time to time but nothing has been done so far.
6. That it is submitted here that Shri Dile Ram was designated as Truck Cleaner but was discharging their duties as Public Distributor Clerk and on the basis of this nature of duties he had been promoted by the management as Public Distributor Clerk and pay him regular basic and other allowances and all other consequential service benefits from the date of he was discharging his duties as Public Distributor Clerk hence all the above named employees whose names mentioned in the para No.1 of the claim petition are entitled to be pay and promoted as Public Distributor Clerk from the date of their initial engagement as Public Distributor Clerk, on the basis of their nature of duties.

Reliefs.

It is therefore prayed, the hon'ble court kindly be granted the following reliefs to the employees union.

1. The Hon'ble Court kindly be directed to respondent to pay the equal pay to the Public Distributor Helper Rs.3120-5160 where as the Public Distributor Helpers are discharging their duties as Public Distributor Clerks w.e.f. 1/1/1996 to onwards.
2. The Hon'ble Court again kindly be Directed to respondents to re-designated/promoted to all the Public Distributor Helpers whose name mentioned in the para No.1 in the claim petition as Public Distributor Clerk on the basis from the date of Dile Ram Cleaner promoted.
3. The Hon'ble Court kindly be determine the facts and circumstances of the dispute and granted the relief to the applicant in the interest of justice and justice be done".

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. The same is reproduced below verbatim for ready reference:—

- “1. That the demand raised by the applicant/petitioner as Vice President of Himachal Pradesh State Civil Supply Corporation, were discussed in detail by the respondents, which were submitted on 2.8.2004, and recommendation were forwarded by the respondent No.1 and thereafter letter was written by the Conciliation Officer cum Labour Officer, Mandi Zone, Mandi, H.P. on 10.8.2004, for further negotiation to the replying respondents and thereafter General Manager Administration intimated the Conciliation Officer Cum Labour Officer, Mandi Zone, Mandi, H.P. vide letter dated 31.8.2004, copy of which is enclosed herewith, with reference that the demand of Union has already been referred to the Service Committee through Principal Secretary of Food and Supply and Consumer Affairs of the Govt. of Himachal Pradesh and the Director Institution and Finance, vide letter dated 16.8.2004.

It is further submitted that the Labour Commissioner of Himachal Pradesh, according to the information received on 25.7.2007, vide letter No.11-23/84/(Lab) ID/07, Mandi, H.P. and regarding which the respondents have submitted the case of the employee to the Govt. of Himachal Pradesh, as stated above, with the recommendation that their demands will be looked into and decided in accordance with the Promotion Rules. However, the scale given to the employees are more than the scale of clerk which they are drawing and additional Rs.300/- is being given as an incentive by way of honourarium and the management is looking into the demands of employee, as referred in the reference from time to time. However, their demands were submitted by Regional Unit of Mandi Zone. Whereas, the State level Union Office bearers used to meet and according their demands used to be addressed by the management, but not as regional unit and as such, whenever there will be vacancies available and then these employees will be promoted in a faced manner. However, there is no benefit to these employee as they are already getting more scale than the scale of clerk.

It is, therefore, respectfully prayed that the demands of these employees will be looked into as a whole whenever and wherever the vacancies will be available, hence consider this reply and justice be done”.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been pleaded that the members of the petitioner union are discharging the duties of clerk from the dates of their initial engagement. However, all of them have been placed as helpers and the pay scale of the helpers (instead of the clerks) is being paid to them. All the employees are entitled to be designated as clerks w.e.f. 01.1.1996 and placed in the clerical pay scale of Rs.3120-5160/-. More than 100 posts of the PDCs (Public Distribution Clerks) have fallen vacant. The helpers numbering more than 100 discharging the duties as PDCs are entitled to equal pay for equal work.

5. Per order dated 11.8.2009, following issues were struck by one of my Id. Predecessors:
1. Whether the demands raised by the petitioner are legal and justified? . . . OPP.
 2. Relief.
6. I have heard the Id. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Chaman Lal, the Vice President of the petitioner union stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he has instituted the claim petition on behalf of the union comprising of 11 workmen. He denied that their scale and the scale of pay of PDCs is the same. He admitted that the department has framed R&P Rules for each and every category of its employees. He denied that he has given a phoney statement.

9. Conversely, Shri Kapil Deep Gupta, Area Manager, (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by the respondents.

In the cross-examination, he admitted that the workmen whose names find mention in the claim petition are discharging the duties of PDCs on different Retail Shops and Depots etc. independently. He also admitted that the seniority lists of the PDHs (Public Distribution Helpers) and PDCs (Public Distribution Clerks) are maintained at the State level. Further, he admitted that Shri Dila Ram was appointed as a truck cleaner by the department in the year 1995. He also admitted that the R&P Rules governing the PDHs Cleaners and Peons-cum-Chowkidars are the same as and when they are to be promoted as PDCs. The promotion is given as per the seniority. He admitted that the workmen whose names have been disclosed in the claim petition are senior to Shri Dila Ram who has been appointed as an officiating clerk per letter dated 08.10.2001. Shri Dila Ram has been given the pay scale of Rs.3120-5160/-. He admitted that the duties being performed by the PDCs are also performed by the PDHs. He cannot say that the petitioner(s) is/are entitled to the equal pay for equal work. Self stated, the petitioner(s) is/are being paid Rs.300/- extra every month from the year 2009 onwards for performing the duties of PDCs. He admitted that some of the petitioners, who have been promoted as clerks from the helpers per orders Marks A to C, are being given the wages of the clerk.

10. Ex. PW1/B is the copy of the demand notice dated 02.8.2004 served upon the respondents by the petitioner/union under Section 2-K of the Act.

11. Ex. PW1/C is the copy of the reply to the demand notice submitted by the respondent No.2 before the Labour-cum-Conciliation Officer, Mandi.

12. Ex. PW1/D is the copy of the Recruitment and Promotion Rules for the post of Public Distribution Clerk (now Clerk/Jr. Assistant).

13. Ex. PW1/E is the copy of the reply dated 29.9.2005 submitted by the respondent No.2 before the Labour-cum-Conciliation Officer, Mandi Zone.

14. Ex. PW1/F is the copy of the letter dated 07.10.2005 written by the petitioner/union to the Labour Officer, Mandi in continuation of the demand notice dated 02.8.2004.

15. Ex. PW1/G is the copy of an office order issued in the month of July, 1996 by the respondent No.2. As per this office order, Shri Chaman Lal and Sh. Hem Singh (PDHs) were transferred.

16. Ex. PW1/H is also the copy of an office order relating to the transfer of PDCs and PDHs.

17. Ex. PW1/I is the copy of the office order. As per this order Shri Dhyhan Singh, Clerk, Gas Agency, Pooh, was transferred to the Retail Shop at Khuddar. He was directed to take charge from Shri Chaman Lal (one of the petitioners) who was posted as PDH at Khuddar.

18. Ex. PW1/J is the charter of demand dated 22.9.2004 forwarded by the Working Committee of H.P. State Civil Supplies Corporation Ltd. Employees Union to the respondent No1.

19. Ex. PW1/K is the copy of an office order dated 30.1.1988. It depicts that Shri Chaman Lal (one of the petitioners) was appointed as daily waged sales helper.

20. Ex. PW1/L is the copy of a letter dated 19.7.1999 written by Shri Chaman Lal to the respondent No.2. In this letter, Shri Chaman Lal mentioned that he has taken the charge from Shri Dalip Singh of Retail Shop, Khuddar.

21. Ex. PW1/M is the copy of the cash memos.

22. Ex. PW1/N is the copy of the day book maintained by Shri Chaman Lal, one of the petitioners.

23. Ex. PW1/O is the copy of the Cash Book maintained by Shri Chaman Lal.

24. Ex. PW1/P is the copy of the monthly report regarding sale and stock summary from 01.9.2005 to 15.9.2005 of Retail Shop, Khuddar maintained by Shri Chaman Lal.

25. Ex. PW1/Q is the copy of a letter dated 19.7.2006 written by the respondent No.1 to all the Area Managers etc. In this letter, it was mentioned that the PDHs (Public Distribution Helpers) who are discharging their duties independently, should be paid the honorarium.

26. Ex. PW1/R is the copy of a letter dated 21.7.1997 written by the respondent No.1 to the various Area Managers.

27. Marks A to C are the copies of the office orders issued by the respondents on different dates. They unfold that on the recommendation of the departmental promotion committee, PDHs/Peon-cum-Chowkidars (including some of the petitioners) were promoted to the post of clerks in the regular pay scale.

28. Section 10 (4) of the Act postulates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto.

29. Browsing of the demand notice dated 02.8.2004 (Ex. PW1/B) makes its crystal clear that the members of the petitioner union nowhere claimed that they should be promoted as clerks w.e.f. 01.1.1996 or the date from which Shri Dile Ram (Truck Cleaner) who is/was junior to them has been promoted as a clerk on officiating basis. Therefore, the said controversy, if any between the parties cannot be looked into by this Court being beyond the terms of the reference/demand notice. Otherwise too, from the statement made by Shri Chaman Lal (PW1), it can be gathered that the respondents have framed R&P Rules pertaining to all categories of the employees. RW1 admitted that the seniority lists of the PDCs and PDHs are maintained at the State level. It is the basic law that one can be promoted only as per R&P Rules depending on his/her seniority coupled with the other factors like the work and conduct etc.

30. The petitioners/workmen have not denied the fact that the majority of them have been promoted as clerks by the respondents per office orders Marks A to C and they are being paid the wages as per the regular pay scale.

31. It is an admitted fact that when the petitioners/workmen were discharging the duties as Public Distribution Helpers independently, they were paid Rs.300/- each as honorarium by the respondents. Such honorarium was accepted by the petitioners without any protest.

32. Simply because the petitioners while being posted as Public Distribution Helpers are/were discharging the duties of Public Distribution Clerks, it cannot be said that they are entitled to the pay of the clerks by applying the principle of equal pay for equal work. In *Jaswant Singh Versus The State of H.P. & Ors.*, 2011 (2) Him. L.R. 890, our Hon'ble High Court has observed:-

“Service Law- Principle of Equal Pay for Equal Work-Petitioner's case is that he has same qualification as regular employee and is discharging the same functions- Held, the factors relied by the petitioner in themselves are not determinative to allow equal pay to petitioner, as claimed by him and for the same reasons, it cannot be said that condition in the Rules excluding applicability of the Rules to contract employees is illegal, arbitrary and unconstitutional- there should be complete and total identity between the two persons similarly situated so as to claim equal pay for equal work. The regular appointee has undergone the selection process and his services are regular- similarity in the designation or quantum of work are not enough for equal pay scales- factors like source and mode of recruitment/appointment, qualifications nature of work, value judgment, responsibilities, reliability, experience, confidentiality, functional need, etc. are relevant for granting equal pay”.

The selection process adopted for the PDHs and PDCs is different. Their responsibilities etc. are also different. In view of the trite laid down in the ruling cited supra, the claim put forth by the petitioners seems to be fallacious.

33. Otherwise also, as already mentioned, the petitioners were paid the honorarium as and when they discharged the duties of PDCs independently while being posted as PDHs. The acceptance of the honorarium by the petitioners debars them from claiming the parity or pay scale of the PDCs.

34. That being so, I have no hesitation to conclude that the demands raised by the petitioner/union are neither legal nor justified. It/they are not entitled to any relief.

35. This issue is decided against the petitioner(s) and in favour of the respondents.

Relief (Issue No. 2)

36. As a sequel to my findings on issue No.1 above, the instant claim petition being meritless fails. It is, therefore, dismissed. Parties to bear their own costs.

37. The reference is answered in the aforesaid terms.

38. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

39. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of October, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 594/2008

Date of Institution : 29.10.2008

Date of Decision : 26.11.2012

Smt. Belu Devi w/o Shri Chuhar Singh, r/o Village Katkehar, P.O. Drahal, Tehsil Joginder
Nagar, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD (B&R) Division, Joginder Nagar, Distt. Mandi, H.P.
. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether giving breaks after every 15 days or so through verbal orders in service of Smt. Belu Devi (Beldar on Daily Wages) W/O Sh. Chuhar Singh by the Executive Engineer, HPPWD (B&R) Division, Joginder Nagar, Distt. Mandi, during his service w.e.f. 01.11.1998 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily waged beldar by the respondent on muster roll basis w.e.f. January, 1999. During the period of her employment, the respondent used to interrupt her services by a verbal order wrongly and illegally. She was provided the artificial/fictional break by the respondent almost from 16th day of every month without any fault on her (petitioner's) part and without following the procedure prescribed under the Industrial Disputes Act, 1947 (14 of 1947) ('the Act' for short) as well as the Rules framed there under. The respondent used to engage and disengage her services by way of victimization and not in good faith. False allegations of absence from duty were leveled against her by the respondent. The breaks were given by the respondent so as to favour the workmen junior to her (petitioner) regardless of their merit. The respondent acted partially and used to terminate her service time and again so as to deprive her (petitioner) from the

status and privileges of a permanent workman. The respondent also wanted to defeat her right of regularization. No seniority list has been maintained by the respondent for years together. The principle of 'last come first go' has not been adhered to. Her preferential right of engagement etc. was ignored every month. Smt. Mathura Devi, Smt. Rumla Devi, Sh. Balak Ram, Sh. Tek Chand, Sh. Nag Raj, Sh. Inder Sh. Prakash, Sh. Sunder, Sh. Sohan Singh, Sh. Dina Nath, Sh. Mansha Ram and Smt. Guddi Devi etc. were employed by the respondent in the year 2000. Shri Jagmohan s/o Shri Saran Dass and Shri Desh Raj s/o Shri Megh Singh etc. were employed by the respondent in the year 2002. Shri Sanjeev Chaudhary and Shri Aminder Pal etc. were appointed in the year 2003 whereas S/Sh. Kishori Lal and Nihal Chand etc. were engaged in the year 2004. All the above named workmen are junior to her (petitioner). They were allowed to work continuously by the respondent. She (petitioner) is/was always ready and willing to work. Artificial breaks were given by the respondent without following the due procedure in order to help the junior workmen in violation of the provisions of Sections 25-G and 25-H of the Act. She (petitioner) preferred O.A. No. (M) 92/2004 before the erstwhile Hon'ble Himachal Pradesh State Administrative Tribunal for the redressal of her grievances. The said Original Application was allowed by the Hon'ble Administrative Tribunal on 20.5.2004. The directions issued by the Hon'ble Administrative Tribunal, have not been complied by the respondent. She (petitioner) has been discriminated. The services of her juniors have been regularized. The period of fictional/illegal breaks is required to be counted towards her continuous service for the purpose of regularization.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“the period of artificial breaks/fictional breaks/illegal breaks/interrupted service may kindly be considered for the purpose of seniority and respondent may consider the period of fictional breaks for the purpose of back wages, regularization and for all consequential benefits, for which the workman/applicant shall ever pray”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. The subject matter of the present reference/petition has already been decided by the Hon'ble Administrative Tribunal per order dated 20.5.2004 passed in O.A. (M) No. 92/2004. As the controversy has been adjudicated upon by a competent Court of law, the petitioner is debarred from starting second round of litigation on the same subject matter. The petitioner is estopped from filing the petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on muster roll basis as a daily waged beldar in the year 1998. Mandays chart is annexure R-II. No artificial breaks were ever given to the petitioner as alleged. The services of the petitioner were engaged as per the requirement of work and availability of the funds pursuant to the verbal requests made by her from time to time. At the time of engaging the services of the petitioner she was duly made aware that her services have been temporarily engaged for a particular period i.e. 10 to 15 days as the case may be since he (respondent) is/was not in a position to provide her the work for the whole month. The principle of 'last come first go' was duly complied with. The petitioner has not been victimized. The persons whose names have been disclosed by the petitioner are senior to her. His (respondent's) office regularly deals with development activities. The labourers are engaged and disengaged as per the availability of the work and the funds. The mandays chart of all the workmen whose names have been divulged by the petitioner (except S/Sh. Sunder and Parkash) is annexure R-III. The petitioner was provided the work every month from January, 1999 to August, 2007. She is working continuously thereafter. The present controversy has already been finally decided by the

Hon'ble Administrative Tribunal per order dated 20.5.2004. The claim petition is hit by the principle of res-judicata. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that she (petitioner) had also instituted a Miscellaneous Application under Rule 23 of the Himachal Pradesh Administrative Tribunal (Procedure) Rules, 1986 against the respondent. In that application, she prayed that necessary directions be issued to comply with the order of the Hon'ble Administrative Tribunal in a time bound manner and in the alternative the respondent be punished as per law for committing the contempt of the lawful order passed by a competent Court. Such Miscellaneous Application was allowed by the Hon'ble Administrative Tribunal. The respondent was directed to do the needful, but in vain. Due to these reasons, she (petitioner) has been forced to institute the present reference/claim petition. Work and funds were available with the respondent/employer. It was never conveyed to her (petitioner) that her services have been engaged temporarily for a specific period/work.

5. Per order dated 08.6.2011, following issues were struck by my Id. Predecessor:

1. Whether the action of the respondent in granting fictional breaks to the petitioner after every 15 days is illegal and violative of the provisions of the I.D. Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.

2. Whether the reference is not maintainable as alleged. If so, to what effect? . . . OPR.

3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? . . . OPR.

4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Redundant

Issue No. 2 : Yes

Issue No. 3 : Redundant

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 2

8. This issue is being taken up by me first for discussion as my findings on the same will impinge the outcome of other issues.

9. Smt. Belu Devi (petitioner) stepped into the witness box as PW1. She reiterated on oath the contents of the petition/statement of claim in its entirety.

10. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD (B&R) Division Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A submitted under Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

11. Ex. P1 is the copy of the order dated 20.5.2004 pronounced by the Hon'ble Administrative Tribunal in O.A. (M) No. 92/2004 titled as Belu Devi vs. The State of Himachal Pradesh, through its Secretary, HPPWD and another.

12. Ex. P2 is the copy of the order dated July 20, 2007 rendered by the Hon'ble Administrative Tribunal in Contempt/Misc. Application No. (M) 221/2006 in O.A. (M) 92/2004 titled as Belu Devi vs. Executive Engineer, HPPWD (B&R) Division, Joginder Nagar and another.

13. Ex. RW1/B is the copy of the Original Application under Section 19 of the Administrative Tribunal Act, 1985 moved by the petitioner before the Hon'ble Administrative Tribunal against the respondent.

14. Ex. RW1/C is the mandays chart relating to the petitioner.

15. Ex. RW1/D is the detail of year-wise working days of the workers namely Sh. Nag Raj and seventeen others.

16. It is the admitted case of the parties that for providing the fictional breaks to the petitioner by the respondent, the former had instituted O.A. (M) No.92/2004 before the Hon'ble Administrative Tribunal camp at Mandi. The said Original Application was finally decided by the Hon'ble Tribunal per order dated 20.5.2004 the copy of which is Ex. P1. The operative part of the order reads thus:-

“Taking into consideration this fact that the applicant is still working and the particular statement given by the Assistant Engineer, the respondents are directed not to give fictional breaks to the applicant if the work, and funds are available. Respondents are further directed not to terminate the services of the applicant except in accordance with law and to comply with the principle of ‘First come last go’. Respondents are further directed to maintain the seniority of such type of persons as per rule.

With these observations original application stands finally disposed of”.

17. In the rejoinder, the petitioner has maintained that the respondent failed to comply with the order dated 20.5.2004 (Ex. P1) because of which she was forced to prefer Contempt/Miscellaneous Application No. (M) 221/2006 against the respondent before the Hon'ble Administrative Tribunal. The said Contempt/Miscellaneous Application was disposed of by the Hon'ble Administrative Tribunal vide order dated July 20, 2007 the copy of which is Ex. P2. The order passed on the said date by the Hon'ble Tribunal is reproduced below verbatim for ready reference:-

“20.7.2007 Present : Shri K. S. Guleria, Advocate, for the applicant.
Shri B. S. Parmar, Addl. Advocate General, for Respondent State.

As per the averments made in the M.A. the same is allowed. However, respondents are directed to do the needful within a period of two months from this order. M.A. stands disposed of”.

18. Browsing of Exts. P1 and P2 unfolds that the controversy raised by the petitioner in the present reference/claim petition has already been decided by competent Court of law. There is nothing on the file to establish that the orders Exts. P1 and P2 have been upset till date. Orders Exts. P1 and P2 have already attained finality. Since the matter directly and substantially in issue between the same parties in the present reference/claim petition has already been heard and finally

decided directly and substantially in the previous litigation viz. Original Application No. (M) 92/2004, the instant claim petition is hit by the principle of res-judicata as envisaged under Section 11 of the Code of Civil Procedure 1908. To my mind, if the respondent has flouted the orders Exts. P1 and P2, the only remedy available with the petitioner is to approach the appropriate Court/Forum by instituting a contempt petition.

19. That being so, I have no hesitation to conclude that the reference/claim petition is not maintainable. The petitioner is not entitled to any relief.

20. This issue is decided against the petitioner and in favour of the respondent.

Issues No. 1 and 3

21. Taking into account my findings on issue No.2, these issues have become redundant. Discussing the same at length will serve no fruitful purpose. Rather, it will be like 'flogging a dead horse'.

22. Otherwise too, by now, it is firmly settled that if the Court finds the case/petition to be not maintainable, it need not give findings on the rest of the issues.

23. These issues are decided as such.

Relief (Issue No. 4)

24. As a sequel to my findings on issue No. 2 above, the present claim petition being not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 363/2009

Date of Institution : 23.5.2009

Date of Decision : 19.11.2012

Shri Chhaje Ram s/o Shri Dagnu Ram, r/o Village Suranh, P.O. Nandi, Tehsil Chahyot,
Distt. Mandi (HP) . . . *Petitioner.*

Versus

The Executive Engineer, HPSEB Electrical Division Gohar, Distt. Mandi, H.P.

. . . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent: Sh. Abhishek Lakhanpal, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Sh. Chhaje Ram s/o Shri Dagnu Ram by the Executive Engineer, HPSEB Division, Gohar, Distt. Mandi, H.P. w.e.f. 22.4.1996 without complying the provision of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, pastservice benefits and compensation the above worked is entitled from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on muster roll basis by the respondent w.e.f. 01.2.1995. He served the respondent/department continuously up-to 21.4.1996. On 22.4.1996, his services were terminated by the respondent despite the fact that sufficient work was available. During the period of his employment, the respondent used to give him fictional breaks. Before the termination of his services neither any notice was given to him nor the retrenchment compensation was paid. The persons junior to him have been retained in service by the respondent so as to favour them. The respondent has failed to abide by the principle of ‘last come first go’. The juniors namely S/Sh. Maan Singh, Chet Ram and Chittar Singh etc. were retained in service and allowed to complete 240 days of work by the respondent. His services have been dispensed with without complying with the provisions of the Industrial Disputes Act, 1947 (14 of 1947) (‘the Act’ for short) and the Rules framed there under. He (petitioner) instituted OA No. 89/2000 before the erstwhile Hon’ble Himachal Pradesh State Administrative Tribunal which was allowed but of no avail. Thereafter, he preferred OA NO.11/02 before the Hon’ble Administrative Tribunal. Such Original Application was disposed of by the Hon’ble Tribunal with the remarks that it has no jurisdiction to deal with the same. After that, a demand notice under Section 2-A of the Act was served upon the respondent by him. From the date of his disengagement he is unemployed.

As such, he (petitioner) prays that the oral termination order dated 22.4.1996 be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is hit by the vice of delay and laches. The petition is bad for non-joinder of the necessary party viz. HPSEB.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.2.1995 and he worked intermittently up-to 21.4.1996. The petitioner used to attend to his duties in a very casual manner. He generally remained absent without intimation. No artificial breaks were ever given to the petitioner. The services of the petitioner were not dispensed

with as alleged. Actually, the petitioner left the job w.e.f. 21.4.1996 of his own accord and free will. He never completed 240 days of continuous service in any calendar year of his employment. The petitioner has not been victimized. Since he left the job willingly the question of issuing any notice to him does not arise. No person junior to the petitioner has been retained in service or engaged/re-engaged. No provision of the Act has been infringed. S/Sh. Maan Singh, Chet Ram and Chittar Singh etc. are not junior to the petitioner. He is gainfully employed and is not entitled to any relief under the Act.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been denied that he abandoned the job.

5. Per order dated 10.2.2010, following issues were struck by one of my Id. Predecessors:

1. Whether the respondent terminated the services of the petitioner w.e.f. 22.4.1996. . . OPP.
2. If the above issue 1 is proved, whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . OPP.
3. Whether the petitioner has abandoned the job on his own on 22.4.1996? . . OPR.
4. Whether the claim petition suffers from the vice of delay and laches? . . OPR.
5. Whether the claim petition is bad for want of necessary part namely Executive Engineer, HPSEB, Electrical Division, Gohar, as alleged? . . OPR.
6. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issue are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Issue No.4 : No

Issue No.5 : Not pressed

Relief. : Claim petition allowed in part vid operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and

8. Being interlinked and to avoid the repetition, all these issues are taken up together for discussion and disposal.

9. The petitioner Shri Chhaje Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he was a casual worker. He also denied that he was informed by the respondent/department that as and when the work is complete, his services will be dispensed with. He even denied that he left the service voluntarily and no person junior to him is serving the respondent.

10. Conversely, Shri T.S. Verma, Assistant Engineer, HPSEB, Pandoh Distt. Mandi, H.P. appeared as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by the respondent.

In the cross-examination, he admitted that the persons junior to the petitioner are serving the Board. He also admitted that the workmen, whose names are there at serial No.94 to 118 of the seniority list Ex. RW1/C, are junior to the petitioner. Further, he deposed that when the services of the labourers at serial No.117 and 118 of the seniority list were engaged, no notice of re-employment was given to the petitioner. Even no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the service. No departmental proceedings were initiated against the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He cannot produce a record/order evidencing that the services of the petitioner were engaged for a particular work.

11. Mark-A is the copy of the order dated 08.8.2001 passed by the Hon'ble Administrative Tribunal in O.A. No. (M) 89/2000 titled as Chhaje Ram vs. H.P. State Electricity Board and others.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the seniority list of casual labourers in respect of the office of the respondent as on March, 2000.

14. No reference has been received from the appropriate Government regarding providing the fictional breaks, if any, to the petitioner by the respondent. Therefore, the said controversy between the parties cannot be looked into by this Court being beyond the terms of the reference.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar w.e.f. 01.2.1995 and he served the respondent/Board up-to 21.4.1996. The version of the petitioner is that on 22.4.1996 his services were wrongly and illegally dispensed with by the respondent. While denying the said fact the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition.

16. It is common knowledge that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be said that he has left/abandoned the job. It is there in the statement of RW1 that no notice was given to the petitioner calling upon him to resume the work after he allegedly left his duties. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

17. The mandays chart Ex. RW1/B depicts that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 22.4.1996 as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

18. Shri T.S. Verma (RW1) in his cross-examination admitted that the persons junior to the petitioner are serving the respondent/Board. The name of the petitioner is there at serial No.93

of the seniority list Ex. RW1/C. RW1 admitted that the workmen, whose names figure at serial No.94 to 118 of the seniority list are junior to the petitioner. He (RW1) also stated that when the labourers, whose names find mention at serial No.117 and 118 of the seniority list were engaged, an opportunity of re-employment was not afforded to the petitioner. From Ex. RW1/C, it can be gathered that Shri Sanjay (serial No.117) and Shri Joginder Kumar (serial No.118) were appointed by the respondent for the first time in the months of October and December, 1996, respectively i.e. after the disengagement of the petitioner

19. That being so, it can be safely said that the respondent has flouted the provisions of Sections 25-G and 25- H of the Act. The termination of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

20. These issues are decided in favour of the petitioner and against the respondent

Issue No. 4

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter

23. While testifying in the Court as PW1, the petitioner has given his age as 39 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he was not gainfully employed. For these reasons, he is not entitled to the back wages.

24. This issue is also decided in favour of the petitioner and against the respondent

Issue No. 5

25. Not pressed.

Relief (Issue No. 6)

26. As a sequel to my findings on the various issues above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 22.4.1996 except back wages. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 185/2010

Date of Institution : 31.5.2010

Date of Decision : 01.11.2012

Shri Deep Kumar s/o Shri Babu Ram, r/o Village Sanada, P.O. Garnota, Tehsil Bhattiyat,
Distt. Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, IPH Division Dalhousie, Distt. Chamba, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Akshay Jaryal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Deep Kumar s/o Shri Babu Ram by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba, H.P. w.e.f. 01.7.1999 and retainin the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

"(1) That claimant was engaged as daily paid beldar in I.P.H. Division Dalhousie in the year August 1996 and continued worked upto 1st 1998 whereas the service of the claimant was discontinued on dated 1st dec 1998 and claimant approached to the hon'ble tribunal at dharamshala vide O.A. (D) 298/1999 for providing fictional breaks

as well as illegal termination but same O.A. (D) no. 298/1999 was withdrawn to this effect that respondent have under taken in their reply that claimant has resumed his duties and still working with the department and also under taken in the reply that service of claimant shall not be terminated except in accordance with law. On that said assurance the O.A. (D) 298/1999 was withdrawn by the counsel appearing on behalf of claimant on dated 20-03-2000 same is annexed as annexure C-1 moreover department official filed wrong reply and affidavit before the hon'ble tribunal then claimant again approached before the hon'ble H.P.A.T. Dharamshala vide O.A. (D) 334/2000 for illegal disengagement on 01-07-1999 and filing of wrong reply but the same was disposed off with want of jurisdiction in the competent court.

- (2) That service of the applicant disengaged without providing any opportunity of being heard and giving any notice which is a mandatory under the law and Act envisaged in I.D. Act 1947. Moreover I.P.H. department is not a sick industry but it is a department have sufficient fund to give employment on daily paid basis.
- (3) That applicant had worked with the full satisfaction of the respondent deptt. and disengaging the claimant and also filed wrong reply before the hon'ble tribunal regarding claimant is on the roll the said act and conduct of the department is highly un-ethical and without any application of mind that some of the juniors were still on the roll at that relevant time.
- (4) That dis-engagement and re-engagement of applicant is regulated under the provision of Industrial Dispute Act 1947. Moreover some of the persons were already with the respondent deptt. when applicant was disengaged name of the following are as under:-
 - (i) Angrej Singh S/O Sh. Raghu Ram R/O Vill. Lahad P.O. Tikari Sub Tehsil Sihunta Distt. Chamba.
 - (ii) Lata Devi Wd/O Sh. Tajweej Singh R/O Vill. Dukhar. P.O. Samote Sub Tehsil Shiunta Distt. Chamba.
 - (iii) Karnail Singh S/O Sh. Munshi Ram R/O Vill. Rakh P.O. Sihunta Tehsil and Distt. Chamba.
 - (iv) Satish Kumar S/O Sh. Duni Chand R/O Vill. Malada P.O. Sihunta Tehsil Sihunta Distt. Chamba.
- (5) That respondent department disengaged the claimant without assigning any bonafide reason moreover the disengagement and re-engagement is regulated in accordance with Sec-25 (G&H) of the Industrial dispute Act 1947. It is therefore respectfully prayed that claimant may kindly be re-engaged along with all consequential benefits along with seniority and past service benefits in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been denied that the services of the petitioner were engaged as a daily paid beldar in the month of August, 1996. Instead, he was employed in the month of September, 1996. It has been owned that O.As (D) No. 298/1999 and 334/2000 were preferred by the petitioner against

him (respondent). The petitioner used to work intermittently as per his sweet will. His mandays chart is annexure R-1. At no stage of the proceedings before the Hon'ble Administrative Tribunal, he (respondent) misrepresented himself. During the pendency of O.A. (D) No.298/1999, the petitioner was working under him (respondent). The petitioner then abandoned the job and instituted O.A. (D) No.334/2000. According to the factual position from time to time the submissions were made before the Hon'ble Administrative Tribunal. The services of the petitioner were never dispensed with as alleged. He left the job willingly w.e.f. 30.6.1999 and thereafter never reported for duty. The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2007. The workmen (except Smt. Lata Devi), whose names have been disclosed by the petitioner/claimant, are senior to him. Smt. Lata Devi has been employed on compassionate grounds after the demise of her husband. No person junior to the petitioner has been retained in service or employed. No provision of the Act has been flouted. Since the petitioner left the service voluntarily, he is not entitled to any protection under the Industrial Disputes Act, 1947 ('the Act' for short). The petitioner is gainfully employed as an agriculturist. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 02.06.2012, following issues were struck:
 1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? . . . OPP.
 2. Whether the petition is not maintainable in the present form? . . . OPR.
 3. Whether the petition is bad on account of delay and laches on the part of the petitioner? . . . OPR.
 4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Deep Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that O.A. (D) No.334/2000 was decided by the Hon'ble Administrative Tribunal in the year 2001, whereas, the demand notice was given by him in the year 2007. He admitted that as and when he attended his duties, the muster roll was issued in

his name by the respondent/department. He denied that he used to remain absent from work of his own. He also denied that all the five workers (except Smt. Lata Devi), whose names have been divulged by him, are senior to him. He admitted that the services of Smt. Lata Devi have been engaged on compassionate grounds after the death of her husband Sh. Tarveej Singh. He (PW1) makes both the ends meet by doing the agricultural work. He denied that he used to mostly remain absent from duty due to the agricultural pursuits. Further, he denied that since he abandoned the job, he is not entitled to the re-employment etc.

9. Conversely, Shri Sunil Dutt Chaudhary, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A submitted as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that no notice was served upon the petitioner after he allegedly left the service. Even no inquiry was conducted against him. He denied that the persons junior to the petitioner are serving under him. The petitioner works as an agriculturist.

10. Ex. RW1/B is the mandays chart relating to the petitioner.

11. Ex. RW1/C is the copy of the demand notice served upon the respondent by the petitioner.

12. Exts. RW1/D, E and F are the mandays charts of S/Sh. Angrej Singh, Karnail Singh and Satish Kumar respectively.

13. Ex. RW1/G is the copy of letter dated 18.9.2000 written by the Chief Engineer, Irrigation and Public Health Department, Dharamshala. It depicts that Smt. Lata Devi was appointed as a daily wager on compassionate grounds after her husband Shri Tarveej Singh left the land of the dying.

14. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

15. In the statement of claim/demand, the petitioner has pleaded that his services were engaged as a daily rated beldar by the respondent in the month of August, 1996. The respondent has taken the plea that the petitioner was appointed in September, 1996 instead of August, 1996. The said fact appears to be true in view of the mandays chart Ex. RW1/B. It is not the case of the petitioner that the mandays chart Ex. RW1/B produced by the respondent is incorrect.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar in the month of September, 1996 and he worked intermittently up-to 30.6.1999. The version of the petitioner is that on 01.7.1999, his services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition.

17. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was given to the petitioner calling upon him to resume his duties after he allegedly left the service. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

18. The mandays chart Ex. RW1/B unfolds that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 01.7.1999 as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

19. In the claim petition and the proof affidavit Ex. PW1/A, the petitioner has mentioned the names of four persons who are allegedly junior to him and retained in service by the respondent. The mandays charts Exts. RW1/D to F make it crystal clear that S/Sh. Angrej Singh, Karnail Singh and Satish Kumar were appointed by the respondent in the years 1987 and 1994. They are senior to the petitioner, whose services were initially engaged in the month of September, 1996.

20. So far as Smt. Lata Devi is concerned, the letter dated 18.9.2000 (Ex. RW1/G) reveals that she was appointed on compassionate grounds after the expiry of her husband Shri Tarveej Singh, a daily waged beldar. The date of initial appointment of Late Shri Tarveej Singh has not come on the record to show that he too was senior to the petitioner. Admittedly, the services of Smt. Lata Devi were engaged after the retrenchment of the petitioner. There is nothing on the file to prove that at the time of the employment of Smt. Lata Devi, an opportunity of reemployment was afforded to the petitioner as envisaged under Section 25-H of the Act. Therefore, the termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

21. Such being the situation, I have no hesitation to conclude that the termination of the services of the petitioner by the respondent is wrong and illegal.

22. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

23. Not pressed.

Issue No. 3

24. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

25. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

26. The petitioner (PW1) in his cross-examination admitted that he earns his livelihood by doing the agricultural work. While testifying in the Court as PW1, the petitioner has given his age as 40 years. It is common knowledge that a young man like the petitioner will not sit at home

during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

27. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 4)

28. As a sequel to my findings on the various issues above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 01.7.1999 except back wages. Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 432/2008
Date of Institution : 13.6.2008
Date of Decision : 19.11.2012

Shri Gandhi Ram s/o Shri Palas Ram, r/o Village Lahanjanu, P. O. Katandhi, Tehsil Sadar,
Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD Division No.1, Mandi, Distt. Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Laxman Thakur, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Sh. Gandhi Ram s/o Shri Palas Ram, by the Executive Engineer, HPPWD Division No.1 Mandi, Distt. Mandi, w.e.f. 2/2000, while junior to him are kept in job, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a beldar by the respondent on 01.4.1994. He served in Sub Division Kamand, Tehsil Sadar, District Mandi (HP) regularly up-to 30.6.2000. On 1st July, 2k, his services were terminated by the respondent by a verbal order on the pretext that there is insufficiency of the work and the funds. During the period of his employment, the respondent used to give him the fictional breaks. He was not allowed to complete 240 days of work by the respondent with intent to mar his seniority. At the time of the termination of his services, the persons junior to him were retained in service by the respondent. The latter has failed to abide by the principle of ‘last come first go’. Not only this, the juniors were allowed to complete 240 days of work in each and every calendar year of their engagement by the respondent. The respondent/department has adopted the policy of pick and choose in violation of the principles of natural justice. One Shri Ram Lal was appointed by the respondent in the month of October, 1998. His services were also disengaged. Shri Ram Lal was junior to him (petitioner). He has been re-engaged by the respondent in the month of February, 2006. The act and conduct of the respondent is illegal and unjustified. It is also in contravention of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947) (‘the Act’ for short). A demand notice was served upon the respondent by him under Section 2-A of the Act, but in vain.

As such, he (petitioner) prays that the termination order be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal right of the petitioner has been infringed. The petitioner has misrepresented himself. He has concealed material facts from the Court. The claim petition is bad on account of delay and laches on the part of the petitioner. The instant industrial dispute has been raised by the petitioner at a very late stage by issuing the demand notice dated 12.4.2006 (annexure R-I).

On merits, it has been owned that the services of the petitioner were engaged as a daily paid beldar. However, it has been denied that the petitioner was initially appointed on 01.4.1994. His services were engaged in the month of December, 1997 vide muster roll No.335, the copy of which is annexure R-II. The petitioner worked intermittently up-to the month of February, 2000 as per his convenience and sweet will. The mandays chart is annexure R-III. No fictional breaks were ever given to the petitioner. Even he was not removed from service as alleged. Actually, in the month of February, 2000, the petitioner voluntarily abandoned the job to take up the whole time profession of an agriculturist for his livelihood. He is gainfully employed. Since the petitioner left the service of his own, he is not entitled to any protection under the Act. Shri Ram Lal was initially engaged in the month of October, 1998 on daily wage basis and he worked in HPPWD Division No.1 Mandi. His mandays chart is annexure R-V. Shri Ram Lal has been re-engaged as per the Award dated 28.10.2005 passed by this Court in Reference No.89/2003. No person junior to the petitioner has been retained in service or re-engaged. No provision of the Act has been infringed. The petitioner has no enforceable cause of action. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 10.8.2011, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. July, 2000 is violative of the provisions of Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the reference is not maintainable as alleged, If so to what effect? . . . OPR.
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? . . . OPR.
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes. (The disengagement took place in the month of February, 2000)

Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Gandhi Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in the month of December, 1997 and he served the respondent/department up-to January, 2000. He denied that he used to remain absent from duty because of which he could not complete 240 days of work in any year of his employment. He also denied that in the month of February, 2000 he left the job willingly. He admitted that the present industrial dispute was raked up by him in the year 2006. He also admitted that Shri Ram Lal has been re-employed as per the orders of the Court. He denied that he is not entitled to the re-engagement etc. since he voluntarily abandoned the job. He admitted that he makes both the ends meet by doing the work of agriculture.

9. Conversely, Shri Arun Pathania, Executive Engineer, HPPWD, Padhar Division (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the service. Even no departmental proceedings were initiated against the petitioner. He denied that the petitioner did not abandon the job and new/fresh hands have been engaged after the year 2000. The persons junior to the petitioner are serving under him as per the orders of the Court or on compassionate grounds. He admitted that Shri Ram Lal is junior to the petitioner. He has been re-engaged in the year 2006 as per the orders of the Court.

10. Ex. RW1/B is the copy of the demand notice dated 12.4.2006 served upon the respondent by the petitioner.

11. Ex. RW1/C is the copy of the muster roll from 01.12.1997 to 31.12.1997 which was issued in the name of the petitioner and others by the respondent.

12. Ex. RW1/D is the mandays chart relating to the petitioner.

13. Ex. RW1/E is the copy of the Award dated 28.10.2005 pronounced by one of my Id. Predecessors in Reference No.89/2003 (RBT No.385/04) titled as Ram Lal vs. Executive Engineer, HPPWD Division No.1, Mandi.

14. Ex. RW1/F is the detail of working days of Shri Ram Lal s/o Shri Sunder Singh.

15. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any between the parties cannot be looked into by this Court being beyond the terms of the reference.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of December, 1997 and he served the respondent/department up-to the month of January, 2000. The version of the petitioner is that in the month of February, 2000, his services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has maintained that the petitioner abandoned the job of his own accord and free volition.

17. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. The respondent (RW1) in his cross-examination admitted that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the service. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

18. The mandays chart Ex. RW1/D unfolds that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

19. From the mandays chart Ex. RW1/F, it can be gathered that the services of Shri Ram Lal were initially engaged by the respondent in the month of October, 1998. He is/was junior to the petitioner, who was appointed in the month of December, 1997. The respondent (RW1) also admitted that Shri Ram Lal is junior to the petitioner. Ex. RW1/F reveals that Shri Ram Lal served the respondent/department up-to the month of February, 2001. His services were not disengaged by the respondent at the time of the termination of the services of the petitioner. This clearly shows that the respondent failed to adhere to the principle of 'last come first go'. His action thus contravenes the provisions of Section 25-G of the Act.

20. Not only this, it is an admitted fact that Shri Ram Lal has been reengaged by the respondent in obedience to the Award dated 28.10.2005 (Ex. RW1/E) passed by this Court. There is nothing on the record to show that at the time of re-engaging the services of Shri Ram Lal, an opportunity of re-employment as envisaged under Section 25-H of the Act was afforded to the petitioner by the respondent. That being so it can be safely said that the termination of the services of the petitioner by the respondent is illegal and unjustified as the same is violative of Sections 25-G and 25-H of the Act. Needless to say that for deriving the benefit under the said Sections a workman need not complete 240 days of work in a block of 12 calendar months preceding the date/month of his retrenchment.

21. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

22. Not pressed.

Issue No. 3

23. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

25. While testifying in the Court as PW1, the petitioner has given his age as 40 years. During the cross-examination the petitioner (PW1) admitted that he makes both the ends meet by doing the work of agriculture. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 4)

27. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. February, 2000 except back wages. Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT BILASPUR)**

Ref No. : 92/2010

Date of Institution : 23.4.2010

Date of Decision : 08.11.2012

Shri Gian Singh s/o Shri Hukam Singh, VPO Dehlan, Tehsil & Distt. Una, H.P.

. . *Petitioner.*

Versus

M/s Suraj Fabrics Pvt. Ltd. (Steel Division) Patch No.-3 & 4, Phase-II, Industrial Area
Gwalathi, Tehsil Sh. Naina Devi Ji, Distt. Bilaspur, H.P.

. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : Sh. Manoj Pillai, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether action of the management of M/s. Suraj Fabrics Pvt. Ltd. (Steel Division) Patch No. 3 & 4, Phase-II, Industrial Area Gwalathi, Tehsil Sh. Naina Devi Ji, Distt. Bilaspur to not allow Sh. Gian Singh S/O Sh. Hukam Singh, workman to resume his duty on 11.12.2006 and after wards on being declared medically fit by the Doctor (and who met with an accident during duty time) is proper and justified? If not, what relief of service benefits the above workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he joined as a Rigar in the respondent company on 05.3.2006. He continuously worked with the respondent till 10.7.2006. His salary was Rs.4500/- per month. On 10.7.2006, while he was on duty, he met with an accident causing multiple injuries to him. He suffered the injuries on the right arm and the hand. After the mishap he was taken to BBMB Hospital Nangal Town, District Ropar (Punjab). First aid was provided to him in the said Hospital and, thereafter, he was shifted to PGI Chandigarh for treatment. He remained admitted to the PGI and was called time and again for the periodical check up. On 16.2.2008, it was declared that he has become 20% permanently disabled. On 11.12.2006 after being discharged from the PGI, Chandigarh, he approached and presented himself before the respondent for joining the duty. He was prevented to join the duty by the respondent on one pretext or the other. Even the management of the respondent/company was not ready to pay him the earned dues and the compensation. He instituted an application in the Court of the Commissioner under the Workmen's Compensation Act, 1923 (SDM, Una). His claim was contested by the respondent. Subsequently the matter was compromised and he was paid the compensation. The respondent has totally refused to allow him to join his duties. The representation made by him fell on deaf ears, where-after, he served a demand notice upon the respondent. Since he suffered the injuries during the course of the employment, the entire period for which he remained under treatment is to be counted for the purpose of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947) hereinafter referred to as the Act. He has not been charge-sheeted by the respondent till date for not attending his duties. Otherwise

too, he was ready and willing to join the duty but was not allowed to do so by the respondent on the pretext that he is not fit to perform his duties. The work of the respondent factory is going on smoothly. The strength of the workers has also increased day by day. More than 800 labourers are working with the respondent at present. The respondent has failed to seek permission to retrench him under Section 25-N of the Act. No seniority list of the workers has been maintained by the respondent. The persons junior to him have been retained in service by his opponent. Neither any notice was served upon him (petitioner) nor the retrenchment compensation was paid. From the date of the accident, he has tried his level best to secure the employment, but in vain. He is also entitled to the protection under the Persons with Disabilities Equal Opportunities Protection of Rights and Full Participation Act, 1995. By not allowing him to resume his duties, he has been put to unnecessary loss of wages by the respondent.

As such, he (petitioner) prays that the action of the respondent not to allow him to resume his duties be declared as illegal, null and void. He be granted the incidental benefits like wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that this Court/Tribunal has no jurisdiction to entertain the reference/claim petition as the controversy between the parties does not fall within the definition of an industrial dispute. Its (respondent's) action does not amount to retrenchment as per Section 2 (oo) of the Act. When there is no retrenchment, the Act does not apply. The claim petition is not maintainable. The petitioner does not fall within the ambit of a worker as defined under the Act. He was simply employed as a casual labourer for a specific period for a particular construction job. When that job was over the question of engaging him does not arise. While working, the petitioner met with an accident. He was incapacitated to perform his duties because of which he abandoned the job. Moreover, the work for which the services of the petitioner were engaged was over in the month of November, 2007. After being declared medically fit, the petitioner did not report for duty. As and when he visited the office, his prayer used to be for making the payment of the bills. Some representation was made to the General Manager, District Industries Centre Bilaspur by the petitioner. Letter dated 20.11.2006 was received from the G.M.D.I.C. by it (respondent). The same was replied on 25.11.2006. As is evident from the representation, the petitioner requested only for the payment of his medical bills. The petitioner had submitted his medical claim to the tune of Rs.45,000/- approximately. He also requested for more money on the ground that he is willing to run a shop as his services were not required by the management being a casual labourer. The petitioner had informed that he is not keeping good health because of which he should be paid more money on compassionate grounds. When the request of the petitioner for payment of the handsome amount was not accepted, he moved an application before the Commissioner under the Workmen's Compensation Act at Una. The management displayed an attitude of magnanimity just to help the petitioner. He was paid a sum of Rs. 2,10,000/-, which was four times his medical bills and included the payment for the loss of future income. Such amount was paid to the petitioner just to help him out of the way. After receiving the payment the application was withdrawn by the petitioner from the Court of the Commissioner. The settlement deed which was entered into between the parties goes to show that the dispute was settled for all times to come. After receipt of Rs.2,10,000/-, the petitioner displayed an attitude of dishonesty. He is estopped from filing the instant claim petition by his act and conduct. The petitioner is exploiting the legal provisions in one way or the other to get more and more relief. The beneficial provisions of the Act cannot be allowed to be misutilized. The claim petition does not lie.

On merits, it has been denied that the services of the petitioner were engaged as a Rigar. However, it has been pleaded that the petitioner was appointed as a casual labourer on 05.3.2006 on payment of Rs.150/- daily. He was never engaged on monthly basis. The facts that the petitioner met with an accident while being on duty and was treated in different hospitals have not been

disputed. Rs.2,10,000/- were paid by way of settlement to the petitioner. His claim was never contested before the Workmen's Compensation Commissioner. The petitioner never approached it (respondent) for re-employment. Instead, he was unable to perform his duties because of the disability. No charge sheet was required to be issued to the petitioner since he was a casual labourer. It (respondent) is facing financial and administrative constraints. The petitioner left the job of his own. No notice was required to be given to him. The petitioner had demanded more money to buy and run a shop as he was unfit to work. He is not entitled to any protection under the Act. No provision of the Act has been violated.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that his services were abruptly terminated by the respondent without any valid reason when he became handicapped while discharging his duties. He did not abandon the job. After being declared medically fit he had reported for duty, but the respondent did not allow him to perform his duties on one pretext or the other. His ill health is due to the accident arising in the course of the employment. The compensation paid to him under the Workmen's Compensation Act has nothing to do with the instant case. New/fresh hands have been employed by the respondent after his termination.

5. Per order dated 07.07.2011, following issues were struck by my Id. Predecessor:-

1. Whether the act of the respondent is not allowing the petitioner to resume his duty w.e.f. 11.12.2006 and his subsequent disengagement is violative of the provisions of Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether this Court has no jurisdiction to entertain the present reference as alleged. If so to what effect? . . . OPR.
3. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Gian Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that his services were engaged by the respondent for the construction of a shed on payment of Rs.150/- per day. He also denied that he has not been removed from service by the respondent. He admitted that he suffered the injuries in an accident because of which he was not in a position to work. He denied that the work for which his services

were engaged was completed in the month of November, 2007. He even denied that he did not approach the respondent for re-employment after being declared medically fit. He admitted that his medical bills amounting to Rs.45,000/- were due for payment. He denied that he had demanded the money excluding medical bills from the respondent so that he can open a shop. Further, he denied that he had requested the respondent to pay him more compensation amount on the pretext that he remains unwell. He admitted that when the respondent refused to pay him more money he preferred a case in the Court of the Workmen's Compensation Commissioner at Una. He also admitted that as per the compromise Rs.2,10,000/- were paid to him by the respondent in that case. He denied that he had received Rs.2,10,000/- from the respondent in lieu of the medical expenses and future loss. He is fully fit now. He refuted that he has instituted a phoney petition.

9. Conversely, Shri S.K. Sharma, Manager (Personnel) of the (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply.

In the cross-examination, he deposed that they did not call the petitioner for work after the accident. Self stated, he was only a temporary worker employed on casual basis. He denied that they did not allow the petitioner to resume his duties as he had become physically disabled. He even denied that the petitioner has been retrenched from the service in a wrongful manner.

10. Ex. RW1/B is the copy of the application under Section 4-A of the Workmen's Compensation Act, 1923 preferred by the petitioner against the respondent before the Commissioner under Workmen's Compensation Act at Una (HP).

11. Ex. RW1/C is the copy of the statements of the parties recorded in the above noted case by the Commissioner.

12. Ex. RW1/D is the copy of the order dated 16.4.2008 passed by the Sub Divisional Officer (Civil)-cum-Commissioner Workmen's Compensation Una in Case No.4/2007 titled as Gian Singh vs. M/s. Suraj Fabrics Pvt. Ltd. and another. It depicts that the application of the applicant/petitioner was disposed of as the matter was compromised.

13. Ex. RW1/E is the copy of the settlement/compromise deed which was entered into between the parties in the compensation case.

14. It is the admitted case of the respondent that the services of the petitioner were engaged on 05.3.2006 and he served continuously up-to 10.7.2006. It is also an admitted fact that on 10.7.2006, while being on duty the petitioner met with an accident and got hurt, where-after, he was admitted to PGI, Chandigarh for treatment.

15. The respondent has not placed on the record any document evidencing that the services of the petitioner were engaged as a casual labourer for specific work i.e. construction of the shed. Moreover, the respondent has not pleaded in its reply that the petitioner was employed for the construction of the shed only. The evidence to that effect led by the respondent being beyond its pleadings cannot be read.

16. The plea put forth by the petitioner is that after being declared medically fit and discharged from the hospital, he approached the respondent on 11.12.2006 to join his duties, but the latter did not permit him to perform the duties. While denying the said fact, the respondent has maintained that the petitioner never approached the management to join his duties. He simply approached the management for payment of the medical bills and some more money to open a shop on the pretext that being unwell he is unable to work in the factory. The petitioner had also represented to the GMDIC for payment of the treatment charges and compensation only.

17. The assertion made by the respondent does not appear to be true in view of the representation dated 23.9.2006 made by the petitioner to the Hon'ble Industries Minister of H.P. The copy of the said representation is there on the file. Its perusal discloses that the petitioner had requested for payment of the medical bills, compensation and re-employment. This representation made by the petitioner was infact forwarded by the GMDIC to the respondent for its report/comments. The representation dated 23.9.2006 makes it abundantly clear that after getting medically fit the petitioner had requested the respondent for re-engagement, but of no avail.

18. The respondent has pleaded that the services of the petitioner were never disengaged by the management. To my mind, the act and conduct of the respondent not to allow the petitioner to resume his duties amounts to retrenchment as provided under the Act.

19. So far as, the plea of abandonment put forth by the respondent is concerned, I will like to say that it is well known that the abandonment has to be proved like any other fact by the respondent/employer. The respondent has failed to lead any cogent and convincing evidence to establish that the petitioner left the job of his own accord and free volition. Otherwise too, it is an admitted fact that no disciplinary proceedings have been initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment raised by the respondent is not established. Even the payment of the compensation amounting to Rs.2,10,000/- before the Commissioner under the Workmen's Compensation Act will not come to the rescue of the respondent as the copy of the compromise/settlement deed Ex. RW1/E makes it crystal clear that the applicant/petitioner nowhere gave up his right of employment/re-employment. The payment was received by the claimant/petitioner on account of the medical expenses, pain, suffering and loss of future earnings alongwith the interest.

20. It has already been concluded by me that the services of the petitioner were retrenched by the respondent. Now comes the question as to what relief the petitioner is entitled to ?

21. The petitioner has not disclosed the name of any person junior to him who was retained in service by the respondent at the time of his retrenchment. Further, the petitioner has not divulged the name of any person who was employed by the respondent after his disengagement. Thus, the provisions of Sections 25- and 25-H of the Act are not attracted in this case.

22. In the petition the petitioner has nowhere pleaded that he had continuously worked for 240 days in a block of 12 calendar months preceding the date of his termination i.e. 11.12.2006. The said fact has also not been stated by him on oath while deposing in the Court as PW1. The mandays chart of the petitioner is not there on the record. For these reasons, by no stretch of imagination, it can be concluded that the petitioner had continuously served for 240 days as envisaged under Section 25-B of the Act. That being so, it cannot be said that the respondent has contravened the provisions of Section 25-F of the Act.

23. Such being the situation, it is held that the petitioner is not entitled to any relief. The action of the respondent is legal and justified.

24. This issue is decided against the petitioner and in favour of the respondent.

Issue No. 2

25. Not pressed.

Relief (Issue No. 3)

26. As a sequel to my findings on issue No.1 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 418/2009
Date of Institution : 28.8.2009
Date of Decision : 01.11.2012

Smt. Guddo w/o Late Shri Bhilo Ram, r/o Village Marandi, P.O. Raipur, Tehsil Bhattiyat,
District Chamba, H.P. . . . *Petitioner.*

Versus

The Executive Engineer, I. & P.H. Division Dalhousie, Distt. Chamba, H.P.

. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Akshay Jaryal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Guddo w/o Late Shri Bhilo Ram by the Executive Engineer, I. & P.H. Division Dalhousie, District Chamba, H.P. w.e.f. 15.11.2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her husband (late Shri Bhilo Ram) was serving as a daily paid beldar with the respondent/department from the year 1983 to 1995. He died in harness on 18.1.1995. After the demise of her husband she (petitioner) was appointed as a daily waged beldar in place of her husband by the respondent in the year 1995. She served the respondent continuously from the year 1995 to 2000 and completed more

than 240 days of work in each and every calendar year of her engagement. To her utter surprise she received a termination order/notice dated 11.10.2000 from the respondent whereby her services were proposed to be dispensed with w.e.f. 15.11.2000 without assigning any reason. The termination notice has been issued by the respondent without assigning any reason. At the time of the termination of her services the principle of 'last come first go' has not been adhered to by the respondent. The persons junior to her have been retained in service by the respondent. Their names are Smt. Kamla Devi w/o Sh. Magher Singh and Asha Kumari. She (petitioner) requested the respondent many times to re-engage her in view of the fact that the persons junior to her have been allowed to continue in service by the respondent/department, but in vain. The act and conduct of the respondent amounts to the unfair labour practices and victimization. The same is also violative of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short).

As such, she (petitioner) prays that the termination order/notice be set aside. The respondent be directed to reinstate her in service with all consequential benefits including the seniority, continuity and the payment of back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The claim petition is hit by the vice of delay and laches. The petitioner is estopped from instituting the claim petition by her act and conduct.

On merits, it has been denied that the services of the petitioner were engaged on compassionate grounds after her husband left the land of the dying. However, it has been owned that the petitioner was appointed as a daily rated beldar in the month of May, 1995. Her mandays chart is annexure P1. The services of the petitioner were engaged with other daily waged workers due to the availability of the works from time to time. Because of the shortage of the funds and works in the Division, he (respondent) is facing huge financial constraints. It has become impossible for him to adjust all the workers who are large in number. Due to the less budgetary provision and availability of the work, 363 labourers alongwith the petitioner became surplus. Since their services were no more required by the department, the same were terminated by taking recourse to the provisions of Section 25-F of the Act. At the time of the termination of the services of the petitioner, the principle of 'last come first go' was duly followed. The petitioner was given one month notice. She has also been paid the compensation amounting to Rs.3825/-. The notice and the retrenchment compensation were received by the petitioner without any protest. The services of the petitioner have been disengaged after observing all the codal formalities alongwith the other surplus labourers. The petitioner moved her case for appointment on compassionate grounds only after the retrenchment. The request/case of the petitioner was duly forwarded to the Circle Office, Chamba. Such case was not considered by the appropriate authority as it was delayed. The limit to apply for appointment on compassionate grounds is three years from the date an employee passes away. No person junior to the petitioner has been retained in service. Even no new/fresh hands have been engaged after her retrenchment. Smt. Kamla Devi w/o late Shri Magher Singh has been appointed as a daily waged Chowkidar. Her category is different than the category of the beldars to which the petitioner was appointed. So far as Smt. Asha Kumari is concerned, she is not working in his (respondent's) Division. No junior person has been retained/re-engaged after 16.10.2000 except on compassionate grounds. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that she was appointed after the death of her husband being a poor/indigent person. As her services were

engaged in the year 1995 after the expiry of her husband Sh. Bhilo Ram, the question of submitting the papers in the year 2001 does not arise. Other workers too have been employed by the respondent on compassionate grounds.

5. Per order dated 05.01.2011, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 15.11.2000 is violative of the provisions of Sections 25-F, 25-G and 25-H as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the reference suffers from the vice of delay and laches as alleged. If so, to what effect? . . . OPR.
3. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No.2 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Smt. Guddo stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that she had applied for appointment on compassionate grounds in the year 2001 and her case was rejected by the department due to the delay. She denied that her services were not initially engaged in place of her husband who died in harness. She admitted that in the month of October, 2000, a notice was given to her by the respondent that after 15.11.2000 no budget and work will be available because of which her services are terminated. She admitted that the retrenchment compensation amounting to Rs.3825/- was forwarded to her alongwith the termination notice, the copy of which is Ex. D1. Further, she admitted that after 15.11.2000, her services were dispensed with by her adversary. She does not know that 363 other labourers were removed from service by the respondent alongwith her. She denied that no person junior to her has been retained in service by the respondent. Self stated, Smt. Biasa Devi was terminated alongwith her (PW1). Her services have been re-engaged by the respondent/department. She admitted that Smt. Kamla Devi and Smt. Asha Kumari were appointed in the category of chowkidars whereas, she (PW1) was a beldar. She denied that her services have been terminated by the respondent in a lawful manner because of which she is not entitled to the re-employment etc.

9. Conversely, Shri Sunil Dutt Chaudhary, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the husband of the petitioner was serving the department prior to the year 1995. He denied that the request of the petitioner for appointment on compassionate grounds was wrongly rejected.

10. Ex. RW1/A is the mandays chart relating to the petitioner.
11. EX. RW1/B is the copy of the counterfoil of the cheque which was issued in the name of the petitioner by the respondent towards the payment of retrenchment compensation.
12. Ex. RW1/C is the copy of the acknowledgement evidencing that the termination letter/notice which was sent to the petitioner under registered cover was duly received by her.
13. Ex. RW1/D is the copy of the seniority list of daily waged beldars of the office of the respondent with year-wise mandays up-to 31.12.2001.
14. Ex. RW1/E is the copy of the letter dated 14.3.2001 written by the respondent to the Superintending Engineer, Irrigation-cum-Public Health Circle, Chamba for appointment of the petitioner on compassionate grounds.
15. Ex. RW1/E is the copy of the policy/guidelines issued by the Government of Himachal Pradesh with regard to the time limit for seeking compassionate appointment.
16. It is the admitted case of the respondent that previously Shri Bhilo Ram, the husband of the petitioner was serving as a daily wager. In the statement of claim, it has been pleaded that Shri Bhilo Ram died on 18.1.1995. Admittedly, after the death of Shri Bhilo Ram, the services of his wife (petitioner) were engaged by the respondent as a daily wager. The respondent has admitted that the petitioner served the department from May, 1995 to 15.11.2000. Her services were terminated by the respondent after issuing the notice Ex. D1 w.e.f. 15.11.2k (afternoon) by taking recourse to the provisions of Section 25-F of the Act. There is no denial of the fact that the notice Ex. D1 and the retrenchment compensation were received by the petitioner without any objection.
17. The respondent has placed on the record the seniority list of the daily waged beldars as on 30.6.2012 with mandays up-to 31.12.2011. Its perusal discloses that a number of workmen were appointed by the respondent on compassionate grounds after the disengagement of the petitioner. There is nothing on the record to show that the workmen who expired and in whose place their family members were given the appointments on compassionate grounds are/were senior to the petitioner. Admittedly, at the time of engaging new/fresh hands after the retrenchment of the petitioner, no notice of re-employment was given to her by the respondent. This clearly indicates that the respondent has flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is thus wrong and illegal. The mandays chart Ex. RW1/A depicts that the petitioner had completed more than 240 days of work in a block of 12 calendar months preceding the date of her termination.
18. There is no evidence on the record to establish that at the time of the termination of the services of the petitioner any person junior to her was retained in service by the respondent. The provisions of Section 25-G of the Act are thus not attracted in this case.
19. This issue is decided accordingly.

Issue No. 2

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of

delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon’ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

22. While testifying in the Court as PW1, the petitioner has given her age as 40 years. It is well known that a young woman like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness she was not gainfully employed. For these reasons, she is not entitled to the back wages.

23. This issue is decided in favour of the petitioner and against the respondent.

Relief (Issue No. 3

24. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 15.11.2000 except back wages. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 219/2010
Date of Institution : 04.8.2010
Date of Decision : 26.11.2012

Shri Harbansh Singh s/o Shri Rattan Singh, r/o Village Tilli, Tehsil & District Mandi, H.P.
.. Petitioner.

Versus

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. Abhishek Lakhanpal, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Harbansh Singh s/o Shri Rattan Singh by the Executive Engineer, HPSEB Division, Mandi, Distt. Mandi, H.P. w.e.f. 19.2.2000 is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above oyer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on muster roll basis by the respondent w.e.f. 25.12.1997. He served the respondent/Board upto 19.2.2000. He never left the job of his own. During the period of his employment the respondent used to give him fictional breaks. He was discharging his duties to the entire satisfaction of his superiors. On 19.2.2k, his services were terminated by the respondent by a verbal order. Neither any notice was given to him nor the retrenchment compensation was paid. At the time of the termination of his services the persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. The juniors namely Smt. Uma Devi and others were allowed to work by the respondent and complete 240 days of service. He (petitioner) has been victimized. The persons junior to him have been favoured by the respondent. From the date of his disengagement he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947) (‘the Act’ for short).

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case.

“[I] That the oral illegal retrenchment order dated 19.2.2000 may kindly be set-aside & respondent/employer may be directed to reengage/reinstate the applicant continuously with back wages & all consequential benefits.

[II] That the period of interrupted service may be counted towards continuous service & respondents/employer may be directed to consider the period of his continues service for the purpose of work charge status/regularization in accordance with the judgment of Apex Court in this behalf with all consequential benefits”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is misconceived. The petitioner has no locus standi to sue. He did not work for 240 days in any calendar year of his engagement. The petitioner has no cause of action. The petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands. He has suppressed the material facts from the Court.

On merits, it has been owned that the services of the petitioner were engaged as a casual worker w.e.f. 15.12.1997 and he served the Board up-to 17.2.2000. During the period of his employment the petitioner used to remain absent from work without any prior intimation to him

(respondent). No fictional breaks were ever given to the petitioner. His services have not been terminated as alleged. After 17.2.2000, the petitioner never visited his (respondent's) office for employment. The services of the petitioner were engaged for specific work. At the time of the employment, the petitioner was made aware that on the completion of the work his services are liable to be terminated. No person junior to the petitioner has been retained in service or re-engaged. The petitioner has not been discriminated. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

It has been disputed that his services were engaged for a specific purpose/work. His services have been wrongly dispensed with.

5. Per order dated 10.08.2011, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 19.2.2000 is violative of the provisions of Section 25-F, G and H of the Industrial Disputes Act as alleged. If so, what relief the petitioner is entitled to? . . . OPP.

2. Whether the reference is not maintainable as alleged. If so, to what effect? . . . OPR.

3. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Partly Yes Partly No

Issue No. 2 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS OR FINDINGS

Issue No. 1

8. The petitioner Shri Harbansh Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he did not complete 240 days of work in any year of his employment. Self stated, the respondent used to give him artificial breaks. He denied that he used to leave the job of his own. He also denied that it was conveyed to him by the respondent at the time of the employment that as and when the work is complete, his services will be disengaged. Smt. Uma Devi is junior to him. He denied that he has given a phoney statement.

9. Conversely, Shri Suresh Kumar Sen, Assistant Engineer, Himachal Pradesh State Electricity Board Ltd. testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by the respondent.

In the cross-examination, he admitted that Smt. Uma Devi is junior to the petitioner. When Smt. Uma Devi and other junior workers were engaged an opportunity of re-employment was not given to the petitioner. The services of Smt. Uma Devi etc. have already been regularized.

10. Ex. RW1/B is the mandays chart relating to the petitioner.

11. No reference has been received from the appropriate Government regarding providing the fictional breaks, if any, to the petitioner by the respondent. Therefore, the said controversy between the parties cannot be looked into by this Court being beyond the terms of the reference.

12. The respondent has not placed on the record any document or office order etc. evidencing that the services of the petitioner were engaged for a specific purpose/work and for a particular period.

13. It is the admitted case of the parties that the petitioner was initially appointed on 25.12.1997 and he served the respondent/Board up-to 19.2.2000. The version of the petitioner is that on the said date, his services were wrongly and illegally terminated by the respondent.

14. The petitioner (PW1) in his cross-examination admitted that he did not complete 240 days of work in any year of his employment as envisaged under Section 25-B of the Act. The said fact finds support from the mandays chart EX. RW1/B. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. Shri S.K. Sen (RW1) in his cross-examination admitted that Smt. Uma Devi is junior to the petitioner. She and other workers junior to the petitioner are serving the respondent. Their services have already been regularized. He (RW1) further stated that at the time of the engagement of Smt. Uma Devi etc. an opportunity of re-employment was not afforded to the petitioner. The admissions made by RW1 make it crystal clear that the respondent has flouted the provisions of Sections 25-G and 25-H of the Act. That being so, the termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

16. While deposing in the Court as PW1, the petitioner has given his age as 35 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he was not gainfully employed. For these reasons, he is not entitled to the back wages.

17. This issue is decided accordingly.

Issue No. 2

18. Not pressed.

Relief (Issue No. 3)

19. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 19.2.2000 except back wages. Parties to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM -
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (AT BILASPUR)**

Ref No. : 622/2008
Date of Institution : 29.10.2008
Date of Decision : 08.11.2012

Shri Ishwar Dass s/o Sh. Prabhu Ram, r/o VPO Baila, Tehsil Nalagarh, Distt. Solan, H.P.
. . . *Petitioner.*

Versus

1. The Chairman-cum-Managing Director, H.P. Ex-Servicemen Corporation, Hamirpur, H.P.
2. The Secretary, H.P. Ex-Servicemen Corporation, Hamirpur, H.P.-177005.
3. The Manager, H.P. Ex-Servicemen Corporation Camp Office, Barmana, Distt. Bilaspur, H.P.
. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. R.K. Handa, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the terms and conditions of the Contract Letter, dated- 30.6.2005 which states that if the work and conduct is found unsatisfactory the services will terminated without assigning any reasons and advance notice before completion of Contract, are arbitrary and contrary to the provisions of Labour Laws? If so, what amount of arrears of back wages, seniority, past service benefits and compensation the above aggrieved workmen is entitled to from above employers?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-
 - “1. the name of applicant was sponsored by the Ex-Servicemen Corporation (cell) Hamirpur, H.P. for the post of Clerk during the year 2005 and the applicant has been directed by the Secretary respondent no 2 to appear for interview on 27 June, 2005 vide his letter no HPESCO-HMR-2(B) (Estt-124)/98-471 dated 24 June, 2005 and the applicant appeared for interview on the said date and time.
 2. That the services of applicant has been selected as Clerk on Contract basis and given him appointment order by the respondent no 1 vide his letter no HPESCO-HMR-2(B) (Estt-24)/87-555 dated 30 June, 2005. However the applicant was issued an appointment letter while appointed on arbitrary terms of so called contract.
 3. That the authority of Ex-Servicemen cell has given the understanding to the applicant that his contract shall be renewed on year to year basis till he will attain age of superannuation. But it is regretted with great pain that the authority of the corporation at a first instance served an unproved show cause notice upon the applicant on 17-06-2006 and the some serious allegation/charges were leveled against the applicant by the respondent no 1 vide his letter no HPESCO-HMR-2(B) (Estt-PF-IDS)/2005-553 dated 17 June, 2006. The reply of the said notice was submitted by the applicant to the authority on 22-06-2006.
 4. That it is surprise to mention here that the services of applicant were terminated by the respondent no1 vide his letter no HPESCO-HMR-2(B) (Estt-PF-IDS)/2005-758 dated 18 July, 2006 as per the clause 2 (c) of appointment letter referred above.
 5. That it is submitted here that the services of applicant has been appointed on Contract basis as Clerk by the respondent no1 on 30-06-2005 and thereafter he has been directed by the respondent no 2 to report for duties to respondent no 3 camp at Barmana vide his office order no HPESCO-HMR-2(B) (Estt-99)/87 and endorsement no 623 dated 8 July, 2005 and the applicant has been reported for his duties to respondent no 3 on 8 July, 2005 and he continuously worked with respondent No 3 as on 18 July, 2006.
 6. That during the period from 30-06-2005 to 18-07-2006 the work and conduct of the applicant was fully satisfactory upto the mark and he has not given any complaint to his superior respondent no 3 and he has not received any complaint regarding his unsatisfactory work from respondent No 3 and also no show cause notice has been served by the respondent No 3 to the applicant upto 17 July, 2006.
 7. That it is specifically stated here that the Contract of the applicant has been expired on 29-06-2006 and thereafter non renewal his contract for further period and he had been continuously worked as on 18-07-2006 and during the above said period the applicant has been completed more than 240 days in the twelve calendar preceding month from the date of his alleged termination i.e., 18-07-2006 and before terminating his service by the respondent no 1 the show cause notice was served to applicant but no charge sheet has been served to the applicant as per service rules as well as by laws of the corporation and a regular domestic enquiry has also not been conducted against him to prove the charges leveled against him in show cause notice dated 17 July, 2006 and without complying the same respondent cannot be terminate the services of applicant the law has been settled by the Hon'ble Apex Court and reported in LLR 2008 S.C. 428 case titled Nehru Yuvakendra Sangathan V/S Mehbub Atam Laslar and similar case has also been settled by the Hon'ble Apex Court and reported in LLR 2000 S.C. 577 case titled Narsingh Pal V/S Union of India and Others.

8. That the services of applicant has been terminated by the respondent No 1 on 18-07-2006 but at the time his termination he has not given one month notice or not pay one month wages in lieu of notice period Rs. 4700/- and also not paid retrenchment compensation under section 25-F of the Industrial Disputes Act, 1947 whereas the applicant has been completed more than 240 days in the last twelve calendar preceding month and the case of the applicant is not covered under section 2 (oo) (bb) of the Industrial Disputes Act, 1947 as such the contract period of applicant has expired on 29-06-2006 and thereafter the contract of applicant has not renewal by the respondent No 1 and from 30-06-2006 to 18-07-2006 whereas the applicant had been worked under the respondent No 1 to 3 and he has been paid the salary for such period as such non renewal of contract of service will be retrenchment under the UP Industrial Disputes Act, in the absence of relevant provisions of law case has been settled by the Hon'ble Apex Court and reported in 2001 LLR 1220 S.C. case titled U.P. State Sugar Corporation vs Om Prakash Upadhyaya.
9. That the said word of contract in the appointment letter are ingénue and camouflage where the work of clerk is of perennial in nature and as such remained continued till the corporation shall remained in existence. Therefore the services of applicant do not covered under section 2 (oo) (bb) of Act 14 of 1947 and it is a case covered under section 2 (oo) Read with Section 25-F, 25-FFF of Act 14 of 1947. Retrenchment or termination of service as a result of non-renewal of contact of employment after its expiry cannot be acted upon without compliance of section 25-F of Act, 14 of 1947. The Hon'ble Supreme Court of India held in its landmark judgment reported in 2003 LLR 470 S.C. case titled S.M. Nilajkar & Ors v/s Telecom District Manager, Karnatka that such termination of services are amount to retrenchment under section 25-F and 25-FFF of Act 14 of 1947. And in this case no such provisions were complied and therefore termination of applicant is null, void and inoperative and the applicant is liable to be reinstate in the service.
10. That after termination the services of applicant the person namely Dinesh Kumar R/o Hamirpur has been appointed as clerk in place of applicant it means the post were permanent in nature and the services of applicant has only terminated to adjust the above said employee. The services of applicant has been terminated/retrenched, but the protection of rule 78 of the Central Industrial Disputes Act, 1957 and the respondent has not given opportunity to applicant for reappointment and the same has been violated under Section 25-H of the Industrial Disputes Act, 1947.
11. That the respondent no one have made the integrity of the workman applicant doubtful in the eyes of one and all and as such he rendered unemployed and shall remain so in future also in view of the unwarranted and illegal removal from the services. The respondent corporation shall be held responsible for all the consequences including monetary benefits and also or mental agony and harassment given to applicant for no fault on his part and the said termination orders are without any cause of action and reasons.
12. That the applicant remained solider in Indian Army for quite long time and the work and conduct of the applicant throughout his service tenure was excellent as during entire tenure of service he was never served with any explanation call, warning letter etc. during army services and further his work and conduct was also remained excellent while serving the respondent no 1 to 3, but the respondent no 1 has ignored the aspect regarding his past services record while terminating his services by adopting methods unknown to the law. The right livelihood its continuity, better and healthy service conditions are now recognized rights declared by the Apex Court of the land while interpreting the scope of Article 21 and 41 of Constitution of India.

13. That during his service camp at Barmana he has never deputed and deployed to the work in the field as well as transport, and also not loading and unloading the trucks of cement and he was never involved with the drivers and others ACC company officials. The applicant was discharging his duties as clerical nature under the respondent no 3 and the respondent no 3 has only assigned the duty to applicant in office as like typing and all type of correspondence including clerical duties. The applicant has been served his demand notice to respondent dated 25-07-2006 and during the conciliation the demand of the applicant has not been accepted by the respondent and then a failure report under section 12 (4) has been sent to the appropriate government and then the appropriate government referred the said dispute for adjudication to the Hon'ble this Tribunal and the same has been culminated the present dispute.
14. That the act of the respondent no 1 is unfair labour practice and the services of applicant were terminated on 18-07-2006 is highly unjustified, arbitrary, contrary, unconstitutional, intentionally, illegal manner and against the mandatory provision laid down above and the same kindly be set aside on the above said ground.
15. That the applicant is still unemployed and not gainfully employed elsewhere hence, the applicant is entitled full back wages from the date of his illegal termination i.e. 18-07-2006. It is specifically submitted here that the applicant was getting Rs.4700/- per month at the time of his termination.

Reliefs:

It is therefore prayed in view of the aforesaid submissions made here in above the Hon'ble Court may kindly be granted the following relief in the favour of applicant.

1. The Hon'ble Court kindly be set aside the illegal termination order passed by the respondent no 1 dated 18-07-2006.
2. The Hon'ble Court kindly be passed the order to reinstate the services of applicant with full back wages and continuity of service with all consequential service benefits.
3. Any other relief if deemed fit may kindly be granted in the favour of applicant and the Hon'ble Court is also granted Rs.5000/- as litigation cost in the favour of applicant".

3. On notice, the respondents appeared. They filed detailed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petitioner/claimant has no cause of action and locus standi to sue. The petitioner is debarred from instituting the claim petition by his act and conduct. The petition as constituted, framed and filed is not legally tenable in the eyes of law. It deserves outright rejection.

On merits, paras 1 to 15 of the reply are reproduced below verbatim for ready reference.

1. Para No.1 calls for no reply being matter of record.
2. Para No.2 is denied. The applicant was appointed Clerk on Contract basis on a fixed salary of Rs.4500/- per month purely for a period of one year vide appointment letter No. 555 dated 30/06/2005 after accepting all the terms & conditions as laid down in the aforesaid appointment letter by the applicant before joining the duty.

3. Para No. 3 is denied. The applicant was purely appointed on Contract basis & was ordered to work at Camp Office Barmana, District Bilaspur (HP). The applicant was deputed in the Establishment Branch where registration of vehicle for Cement carriage work is maintained as well as other correspondence & in the meantime several complaints were received in the Head Office, Hamirpur against the applicant alleging irregularities in the registration of the vehicles & asking for money from the ex-servicemen Truck operators. A Show Cause Notice was served to the applicant alleging illegal involvement in the attachment of Trucks & the reply of the Show Cause Notice was not found satisfactory & the applicant was rightly removed & his Contract was not further renewed & relieved of his duties.
4. Para No.4 is denied. After examining the reply to the Show Cause Notice & the report submitted by the respondent No. 3 the behaviour of the applicant with the ex-servicemen Truck operators & Staff was not found satisfactory & his services were terminated as per para 2 © of the Contract.
5. Para No.5 calls for no reply being matter of record.
6. Para No. 6 is denied. The work & conduct of the applicant was not satisfactory & his services were terminated after giving him full opportunity to defend his case.
7. Para No.7 is denied. As per terms & conditions laid down in the appointment letter which the applicant accepted before joining the duties the services if found unsatisfactory will be terminated without assigning any reason even before the expiry of the Contract, however the applicant was issued Show Cause Notice & given full opportunity to defend his case before terminating the Contract.
8. Para No. 8 is denied. As per the terms laid down in the appointment letter issued to the applicant no condition have been specified to give one month's notice or one month's wages in lieu thereof.
9. Para No. 9 is denied. The Contract was terminated because the act & conduct of the applicant was not found satisfactory. The applicant was given sufficient time to improve his working system, but he failed miserably to improve his working.
10. Para No. 10 is denied. Sh. Dinesh Kumar was not appointed against the post of applicant. There is no violation U/S 25 C & D of the Industrial Disputes Act 1947 because the work & conduct of the applicant was not satisfactory & he was bringing a bad name to the organization.
11. Para No.11 is denied.
12. Para No.12 is denied.
13. Para No.13 is denied.
14. Para No.14 is denied. Since the act & conduct of the applicant was not satisfactory & was against the interest of the Corporation. The Corporation is meant to rehabilitate the Ex-Servicemen by providing them better services rather than exploiting them, which was being done by the applicant.
15. Para No. 15 is denied.

In these circumstances, the respondents pray that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been denied that he was deputed in the establishment branch for registration of the vehicles where the record of cement carriage work is maintained. No complaint was made against him by any one for the alleged irregularities. As he was not dealing with the truck operators, the question of asking for the money from the truck drivers does not arise. It has been owned that a show cause notice was issued to him by the respondents. The same was duly replied. He was not given full opportunity to defend himself before the termination of his services. He has been removed from service in violation of the principles of natural justice.

5. Per order dated 24.12.2009, following issues were struck by one of my ld. Predecessors:-

1. Whether the terms and conditions of the contract letter mentioned in the reference are unlawful. If so, what relief the petitioner is entitled to? . . . OPP.

2. Whether the petitioner has no locus standi to file the claim petition? . . . OPR.

3. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Ishwar Dass stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim as a whole.

In the cross-examination, he admitted that an appointment letter was issued in his name by the respondent/corporation. He joined the duties after admitting the terms and conditions as contained in the appointment letter to be correct. He admitted that his services were engaged on contract basis for one year on payment of the fixed salary/remuneration. He joined the duty on 30.6.2005. He admitted that he was deputed in the establishment branch of the corporation at Camp Office Barmana. That branch used to deal with the listing of the trucks for loading the cement bags and correspondence. He denied that various complaints were received against him in the head office at Hamirpur that he demands illegal gratification from the truck operators. He admitted that a show cause notice was issued to him by the corporation. It was replied by him. He denied that his reply was found unsatisfactory. He also denied that keeping in view his work and conduct, his

contract of service period was not renewed by the respondents as well as his services were terminated. He has not produced any record to show that Sh. Dinesh Kumar has been appointed in his place by the respondents after his (PW1's) termination. He denied that he has instituted a phoney petition.

10. Conversely, Shri B.P. Rana, Manager, Himachal Pradesh Ex-Servicemen Corporation Camp Office at Barmana (respondent No.3) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by the respondents.

In the cross-examination, he admitted that the services of the petitioner were engaged for one year and his term of appointment came to an end on 29.6.2006. After that the contract of the petitioner was not renewed. He admitted that at the time of the termination of the services of the petitioner, No retrenchment compensation was paid to him. He denied that after the disengagement of the petitioner one Shri Dinesh Kumar has been employed on contract basis.

11. Exts. PW1/B and RW1/B are copies of the appointment letter dated 30.6.2005 issued in the name of the petitioner by the respondent No.1.

12. Ex. PW1/C is the copy of an office order dated 8th July, 2005 issued by the respondent No.2. It depicts that the petitioner was directed to report for duty in Camp Office, Barmana.

13. Ex. PW1/D is the copy of the show cause notice dated 17.6.2006 issued to the petitioner by the respondent No.1. It corresponds to Ex. RW1/D.

14. Ex. PW1/E and RW1/C are the copies of the reply dated 22.6.2006 submitted by the petitioner to the show cause notice dated 17.6.2006 (Ex. PW1/D).

15. Exts. PW1/F and RW1/E are the copies of the termination notice dated 18 July, 2006 given to the petitioner by the respondent No.1. They reveal that the services of the petitioner were terminated with immediate effect in accordance with clause 2 (c) of the appointment letter as his performance was not found satisfactory throughout the period of contract and the reply to the show cause notice was also unsatisfactory.

16. Ex. PW1/G is the copy of the letter dated 24.6.2005 written by the respondent No.2 to the petitioner. It clarifies that the name of the petitioner was sponsored by the Ex-Servicemen Cell for the post of Clerk on contract basis on payment of the fixed salary of Rs. 4700/- per mensem. The petitioner was directed to report in the office of the corporation at Hamirpur on 27th June, 2005 at 11 A.M. for the interview.

17. Marks A to C are the copies of various complaints which were received against the petitioner by the respondents from time to time.

18. It is the admitted case of the parties that the services of the petitioner were engaged as a Clerk on contract basis for one year on payment of the fixed salary/remuneration. Appointment letter dated 30th June, 2005 the copies of which are Exts. PW1/B and RW1/B, was issued in favour of the petitioner. The petitioner (PW1) in his cross-examination stated that he joined the service on 30.6.2005. Admittedly, the period of contractual appointment of the petitioner came to an end on 29.6.2006. Thereafter, the contractual appointment of the petitioner was not renewed by the respondents since as per their version various complaints were received against him (petitioner) as well as his work and conduct was unsatisfactory. The petitioner (PW1) admitted that the show cause notice Ex. PW1/D was given to him by the respondent No.1. Reply to it was submitted by him (petitioner).

19. Clauses 2 (c & l) of the appointment letter Ex. PW1/B postulate as under:-

“c. In case your services are found unsatisfactory you will be terminated without assigning any reason even before of this contract”.

“l. The services shall stand terminated automatically on completion of contractual period”.

20. The petitioner (PW1) in his cross-examination admitted that he had joined the duties after admitting the terms and conditions of the engagement as contained in the appointment letter Ex. PW1/B to be correct. In view of the admissions made by the petitioner, I am at a loss to understand as to how it lies in his mouth to say that any of the stipulations contained in the contract letter dated 30.6.2005 (Ex.PW1/B) is illegal, invalid or arbitrary. The petitioner is estopped from challenging the validity of the appointment letter Ex. PW1/B by his act and conduct.

21. Otherwise too, the period of contractual appointment of the petitioner has already expired. Even if, for arguments sake, it is said that the conditions of appointment as contained in the contract letter dated 30.6.2005 (Ex.PW1B) are arbitrary or contrary to the law, the same will not come to the rescue of the petitioner, for the simple reason that this Court cannot order his re-engagement or renewal of the contractual appointment.

22. Such being the situation and taking into account the observations made in State of Rajasthan and others, Appellants v. Rameshwar Lal Gahlot, Respondent, AIR 1996 Supreme Court 1001 and Municipal Council, Samrala versus Raj Kumar, (2006) 3 Supreme Court Cases 81, it is held that the petitioner has no locus standi to sue. He is not entitled to any relief.

23. These issues are decided against the petitioner and in favour of his opponents.

Relief (Issue NO. 3)

24. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 111/2011

Date of Institution : 16.8.2011

Date of Decision : 01.11.2012

Shri Jagdish s/o Shri Chatro, r/o Village Dhagola, P.O. Sirh, Tehsil & Distt. Chamba, H.P.

. . Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division Chamba (H.P.

. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. A.K. Jaryal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Jagdish s/o Sh. Chatro, Village Dhagola, P.O. Sirh, Tehsil & Distt. Chamba by the Executive Engineer, HPPWD (B&R) Division Chamba (H.P.) during 12/2004, while retaining junior workers in service, as alleged by worker, is legal and justified, if not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he had instituted an Original Application bearing No. OA (D) 233/2003 before the erstwhile Hon'ble Himachal Pradesh State Administrative Tribunal, camp at Dharamshala. Such application was disposed of by the Hon'ble Tribunal with a direction to the respondent not to give the fictional breaks to him (petitioner) and not to terminate his daily paid services except in accordance with law. He served the respondent/department continuously for 11 years. Per letter/notice dated 29.11.2004, his services have been disengaged by the respondent by misinterpreting the order pronounced by the Hon'ble Administrative Tribunal in O.A. (D) No. 233/2003. Shri Umesh Handa and others who had instituted O.A. (D) No. 581/2001 were also terminated by the respondent. However, their services were re-engaged by the respondent due to certain extraneous consideration. In O.A. (D) No. 183/2000 titled as Tilak Raj and others vs. State of H.P. same order was passed by the Hon'ble Administrative Tribunal. The workmen namely Shri Tilak Raj etc. were allowed to complete 240 days of work in each and every calendar year of their engagement. Their services have also been regularized by the respondent in contravention of the law and the policy framed by the Government of Himachal Pradesh. He (petitioner) has been discriminated. His services were dispensed with without giving him an opportunity of being heard. At the time of his disengagement, the persons junior to him namely S/Sh. Umesh Handa, Chaman Lal, Vikarmo, Jarmo, Beli Ram, Tilak Raj s/o Rakhinu Ram, Tilak Raj s/o Teju Ram, Ramesh, Bishan Dass, Sanjay Kumar and Ganesh were retained in service by the respondent. During the period of his employment, the respondent used to give him the fictional breaks. His services have been retrenched without assigning any reason. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short).

As such, he (petitioner) prays that the termination order be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The same is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the petitioner had preferred O.A. (D) No. 233/2003 before the Hon'ble Administrative Tribunal. The said Original Application was decided by the Hon'ble Tribunal on merits per order dated 26.2.2004. It stands admitted that the termination notice dated 29.11.2004 was served upon the petitioner and his services were dispensed with. The termination notices were issued to the petitioner and other similarly situated workmen due to the non-availability of the funds after following the principle of 'last come first go'. The list of workmen to whom the notices were issued is annexure R-2 (A) to R-2 (L). The order dated 26.2.2004 rendered by the Hon'ble Administrative Tribunal is categorical in this regard. For the purpose of regularization, as per the prevailing policy of the Government a workman has to complete 240 days of continuous service for 08-10 years every year. The petitioner did not complete requisite 240 days of work in any year of his employment. He worked intermittently. No artificial breaks were ever given to the petitioner. Moreover, the issue with regard to the fictional breaks has been duly settled by the Hon'ble Administrative Tribunal vide judgment dated 26.2.2004. The termination notice dated 29.11.2004 was given to the petitioner pursuant to the judgment dated 26.2.2004 passed by the Hon'ble Administrative Tribunal. The petitioner worked till January, 2005 as per the availability of the work and the funds. With effect from 04.1.2005, he left/abandoned the job despite the fact that the muster roll for the entire month of January, 2005 was issued in his name. S/Sh. Umesh Handa etc. worked in continuity with him (respondent). Some of the workmen whose names have been disclosed by the petitioner are senior to him. The petitioner is gainfully employed as an agriculturist. No person junior to the petitioner has been retained in service. The petitioner used to work intermittently. He cannot claim parity with the workmen who served continuously. Since the petitioner abandoned the job of his own, he is precluded from claiming benefit under the Act. No person junior to the petitioner has been engaged/re-engaged. No provision of the Act has been infringed. The petition is merit less.

In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been denied that the funds were not available with the respondent because of which the notice of termination was issued. S/Sh. Beli Ram, Chaman Lal, Jarmo and Tilak were also retrenched by the respondent. They have been re-employed. He was not given an opportunity of re-engagement.

5 Per order dated 15.05.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? . . . OPP.
2. Whether the petition is not maintainable in the present form? . . . OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? . . . OPR.
4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Jagdish Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Ex. PW1/C i.e. copy of the termination notice dated 29.11.2004 served upon him by his adversary. Ex. PW1/B is the copy of the termination notice of even date given to Shri Bali Ram by the respondent. In the cross-examination, he denied that the notice dated 29.11.2004 was issued by the respondent due to the non-availability of the work and the funds. He admitted that similar notices were issued to the other labourers as well. He denied that he did not complete the criteria of 240 days of work because of which he is not entitled to the regularization. Further, he denied that no fictional breaks were ever given to him by the respondent. He denied that he left the service willingly. He also denied that the persons whose names have been disclosed by him in para No.3 of proof affidavit Ex. PW1/A are senior to him. He refuted that he remained busy in the agricultural work because of which he voluntarily left the service.

9. Conversely, Shri D.S. Pathania, Executive Engineer, HPPWD Division Chamba (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that as per the record no notice was given to the petitioner calling upon him to resume his duties after he left the job. He also admitted that the persons junior to the petitioner are serving under him.

10. Ex. RW1/A is the mandays chart relating to the petitioner.

11. Ex. RW1/B is the copy of the muster roll issued by the respondent for the period 01.12.2004 to 31.12.2004. It depicts that the petitioner served the respondent/department up-to 18.12.2004.

12. Ex. RW1/C is the copy of the order dated February 26, 2004 pronounced by the Hon'ble Administrative Tribunal in O.A. (D) No. 233/2003 titled as Sh. Narinder Kumar & Ors. vs. The State of H.P. & Ors.

13. Exts. RW1/D1 to D12 are the copies of the termination notices dated 29.11.2004 served upon S/Sh. Mohinder Kumar and Subhash Kumar etc. by the respondent.

14. Exts. RW1/E1 to E11 are the mandays charts of S/Sh. Umesh Kumar & others.

15. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent as claimed. Therefore, the said controversy,

if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

16. The mandays chart Ex. RW1/A depicts that the services of the petitioner were initially engaged by the respondent in the month of November, 1994 and he served the respondent/department intermittently up-to the month of December, 2004. It is an admitted fact that the termination notice Ex. PW1/C was served upon the petitioner by the respondent. The version of the respondent is that despite the issuance of the termination notice Ex. PW1/C, muster roll for the entire month of December, 2004 was issued in the name of the petitioner. However, he served the department only up-to 18/19 December, 2004 and thereafter left the job of his own accord and free volition. While denying the said fact the petitioner has maintained that his services were wrongly and illegally terminated by the respondent in the month of December, 2004.

17. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was given to the petitioner asking him to resume his duties after he allegedly left the service. Absence from duty is serious misconduct. There is not even an iota of evidence on the file to show that some disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

18. The mandays chart Ex. RW1/A unfolds that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

19. The respondent (RW1) in his cross-examination admitted that the persons junior to the petitioner are working under him. This indicates that the respondent has failed to adhere to the principle of 'last come first go'. His action is violative of Section 25-G of the Act. For this reason, the termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act, a workman need not complete 240 days of continuous service in a block of 12 calendar months anterior to the date/month of his termination

20. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

21. Not pressed.

Issue No. 3

22. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

23. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

24. While testifying in the Court as PW1, the petitioner has given his age as 48 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

25. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No.4)

26. As a sequel to my findings on various issues above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. December, 2004 except back wages. Parties to bear their own costs

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P

Ref No. : 172/2007
Date of Institution : 01.11.2007
Date of Decision : 19.11.2012

Shri Jawahar Singh s/o Shri Gajan Singh, r/o Village Pasta, P.O. Taroh, Tehsil Sadar,
District Mandi, H.P. . . Petitioner.

Versus

The Proprietor, M/S Chamunda Traders, Industrial Area Ratti, Ner Chowk, Mandi, District
Mandi, H.P. . . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Laxman Thakur, Adv.

For the Respondent : Sh. Rajesh Verma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Jawahar Singh s/o Shri Gajan Singh workman by the M/S Chamunda Traders, Industrial Area Ratti, Ner Chowk, Mandi, District Mandi, H.P. w.e.f. 01.11.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement o claim/demand) is that his services were initially engaged by the respondent as a Chowkidar (Watchman) on 01.5.2000. He was paid Rs.1300/- each month as salary. He served the respondent continuously up-to 31.10.2002 as a Chowkidar in the factory. He had completed 240 days of work in each and every calendar year of his employment. On 1st November, 2002, his services were terminated by the respondent by a verbal order. Neither any notice was issued to him nor he was paid the retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (14 of 1947) ('the Act' for short). He (petitioner) had maintained a personal diary showing his presence in the factory of the respondent. Its copy is attached to the petition. After his illegal termination, a ne person namely Sh. Hari Singh was appointed as a Chowkidar by the respondent He was not given an opportunity of re-employment. The respondent is habitual of disengaging wrongly the services of his employees. Prior to him (petitioner), Shr Kesar Singh s/o Shri Roop Singh, r/o Village Basta, P.O. Taroh was serving as a Chowkidar under the respondent. His services were also dispensed with illegally by the respondent. Shri Kesar Singh is/was a man of means and adjusted himself by adopting other methods of livelihood. He (petitioner) is a poor man having no source of income except the service rendered under the respondent. He approached the respondent time and again for re-engagement. The latter kept on assuring him that he will be re-employed and given the benefit of seniority, but in vain. Thereafter, a demand notice was served upon the respondent by him. As such, he (petitioner) prays that the retrenchment order dated 01.11.2002 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed repl controverting the averments made in the petition/statement of claim. Preliminar objections have been taken to the effect that the reference/claim petition is no maintainable in the present form. The petition is false and frivolous. It deserve rejection with heavy costs.

On merits, it has been pleaded that he (respondent) is getting th entire work done in the factory on contract basis from the day of its establishment The petitioner, Shri Hari Singh or Shri Kesar Singh were never appointed a Chowkidars by him. The petitioner is not even known to him (respondent). The petitioner never approached him at any point of time for employment as claimed. A false story has been invented by the petitioner just to gain undue advantage. Neither the petitioner was paid any salary nor his presence was marked. Since th petitioner never served under him (respondent), he is not entitled to any relief. No provision of the Act has been flouted.

In these circumstances, the respondent prays that the petition in han be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 12.8.2010, following issues were struck by my Id Predecessor:

1. Whether the termination of the petitioner w.e.f. 01.11.2002 is violative of the Section 25-F and 25-G of the I.D. Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the reference is not maintainable as alleged? . . . OPR.
3. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issue are as follows:-

Issue No. 1 : No

Issue No. 2 : Yes

Relief : Claim petition dismissed vid operative portion of the Award.

REASONS FOR FINDING

Issues No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Jawahar Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he cannot produce any letter or order evidencing that he was appointed as a Chowkidar by the respondent. The diary maintained by him does not bear the signatures of the respondent. Sh. Hari Singh was employed as a Chowkidar by the respondent on 01.11.2002 after his (PW1's) disengagement. The services of Shri Kesar Singh were engaged as a Chowkidar by the respondent on 01.4.2000. He denied that he never served the respondent. He also denied that wrong record has been prepared and a phoney petition has been preferred by him to get the employment.

10. Shri Hari Singh (PW2) and Shri Kesar Singh (PW3) supported the cause of the petitioner. Exts. PW2/A and PW3/A, respectively, are the affidavits furnished by them as per Order 18 Rule 4 CPC.

In the cross-examination, PW2 deposed that he was appointed as Chowkidar by the respondent in the month of January, 2002. He does not know as to whether till date any Chowkidar was kept in the factory by the respondent or not? Both PWs 2 and 3 admitted that they are close friends/associates of the petitioner. They denied that they are telling the lies just to help the petitioner.

11. Conversely, Shri Mohan Lal Gupta, Proprietor, M/s. Chamund Traders (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by him.

In the cross-examination, he denied that the petitioner or Shri Hari Singh etc. were engaged as Chowkidars. He also denied that he is not speaking the truth.

12. Since the relationship of the employer and employee has been denied by the respondent, a duty is cast upon the petitioner to show that his services were engaged as a Chowkidar by the respondent on 01.5.2000 and he served continuously as such up-to 31.10.2002 as claimed. No documents in the shape of appointment letter, pay/wage slip or identity card etc has been produced/exhibited by the petitioner to establish that his services were engaged by the respondent as alleged. The diary maintained by the petitioner will not come to his rescue for the reason that the same does not bear the signatures of the respondent or any of his employees. Otherwise too, such diaries can be prepared by a person at any stage as per his convenience to substantiate the claim.

13. There is no documentary evidence on the record to prove that Shri Hari Singh (PW2) or Shri Kesar Singh (PW3) served the respondent as Chowkidars as alleged. In the statement of claim/petition and while testifying in the Court as PW1, the petitioner stated that after his disengagement Shri Hari Singh (PW2) was appointed as a Chowkidar by the respondent on 01.11.2002. Shri Hari Singh (PW2) in his cross-examination deposed that he was employed as a Chowkidar by the respondent in the month of January, 2002. Since in the month of January, 2002, the petitioner was working as a Chowkidar (as per his version), the question of the engagement of Shri Hari Singh (PW2) as a watchman in the said month does not arise. The discrepancy existing in the statements of PWs makes it abundantly clear that the petitioner is telling nothing else except a bundle of lies.

14. At the cost of reiteration, I will like to add that PWs 2 and 3 admitted during the cross-examination that the petitioner is their friend/associate. As PWs 2 and 3 are interested witnesses, no reliance can be placed upon their testimonies.

15. There is no cogent and convincing evidence on the record to prove that the services of the petitioner were engaged by the respondent as a Chowkidar. Since no relationship of employer and employee ever existed between the parties, the question of the termination of the services of the petitioner by the respondent does not arise. The claim petition is not maintainable. The petitioner is not entitled to any relief.

16. These issues are decided against the petitioner and in favour of the respondent.

Relief (Issue No. 3)

17. Taking into account my findings on the issues No. 1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 570/2008

Date of Institution : 14.7.2008

Date of Decision : 01.11.2012

Shri Mohinder Kumar s/o Shri Rattan Chand, r/o VPO Karnala, P.O. Tretha, Tehsil Dalhousie, Distt. Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, IPH Division Dalhousie, Chamba, Distt. Chamba, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. D.P. Malhotra Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Mohinder Kumar s/o Sh. Rattan Chand by the The Executive Engineer, IPH Division Dalhousie, Chamba, Distt. Chamba w.e.f. 26.11.2000 on the pretext of non availability of Budget/Fund and without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the month of July, 1994. He served uninterruptedly in I&PH Sub Division Banikhet up-to 25.11.2000. On the next day i.e. 26.11.2000, his services were terminated by the respondent without assigning any reason. Neither any notice was given to him nor the retrenchment compensation was paid. He had completed more than 240 days of work in a block of 12 calendar months preceding the date of his retrenchment. He is/was entitled to the regularization of his services in the regular pay scale. At the time of his termination, the persons junior to him who are the favourites of the respondent were retained in service by the latter. He requested the respondent several times to re-engage him, but in vain despite the fact that the work and funds are available with the respondent. He (petitioner) approached the erstwhile Hon’ble Himachal Pradesh State Administrative Tribunal, Shimla, Bench at Dharamshala against his illegal termination by instituting O.A. (D) No.691/2000. The said Original Application was disposed of by the Hon’ble Administrative Tribunal per order dated 28.7.2004 with the remarks that it has no jurisdiction to deal with the same. He (applicant/petitioner) was afforded the liberty to approach the appropriate Court/Forum for the redressal of his grievances. After that, he served the demand notice dated 05.3.2007 upon the respondent but without any success. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (‘the Act’ for short).

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “1. That the applicant kindly be ordered to be re-engaged on the same post of Beldar as at the time of his termination with continuity of service with back wages and consequential benefits.
2. That the services of the applicant be ordered to be regularized from the date of his completion of 240 days of service on his respective post of Beldar in regular pay scale of the post with arrear of pay allowance and consequential benefits”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition/reference is not maintainable in the present form. The same is bad on account of delay and laches on the part of the petitioner. He is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar w.e.f. July, 1994 and he worked as such up-to 25.11.2000. A large number of daily wagers were engaged in I&PH Division, Dalhousie. It was impossible to adjust all the workers due to the shortage of the funds and the work. For this reason, the services of the petitioner alongwith 363 other workers who are/were surplus and no longer required by the department were disengaged. At the time of the termination of the workers, the principle of ‘last come first go’ was adhered to and the provisions of Section 25-F of the Act were followed. One month notice and retrenchment compensation amounting to Rs.4590/- were forwarded to the petitioner under registered cover which he refused to receive. While disengaging the daily waged workers, the seniority of the workers maintained at Divisional level was taken into consideration. It is not possible for the department to retain such a huge force of the labourers any more. The retrenchment compensation to which the petitioner is entitled is lying deposited. After the disengagement, the petitioner never approached him (respondent) for re-employment. No person junior to the petitioner has been retained in service. Even no new/fresh hands have been engaged. The instant industrial dispute has been raised by the petitioner after the lapse of seven years per demand notice dated 05.3.2007. The services of the petitioner and others have been retrenched in accordance with law. No provision of the Act has been infringed. The fact that the petitioner had instituted an Original Application before the Hon’ble Administrative Tribunal has not been disputed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be rejected.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 15.03.2011, following issues were struck by my Id. Predecessor:
 1. Whether the termination of the petitioner w.e.f. 26.11.2000 is violative of the provision of Sections 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
 2. Whether the reference is not maintainable as alleged. If so, to what effect? . . . OPR.
 3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? . . . OPR.
 4. Relief.
6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Mohinder Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that in the year 2000 approximately 363 labourers became surplus. He denied that the notice under Section 25-F of the Act and retrenchment compensation were sent to him under registered cover which he refused to receive. He admitted that no work was provided to him by the respondent/department after 26.11.2000. He does not know that Mark-A (later on exhibited as Ex. RW1/B) is the copy of the termination notice. He denied that no person junior to him is serving the respondent. Self stated, S/Sh. Brij Lal, Tilak Raj and Hem Raj were junior to him. He admitted that he makes both the ends meet by doing the work of agriculture. He also works under MANREGA Scheme. He denied that he is not entitled to the re-employment etc.

9. Conversely, Shri Sunil Dutt Chaudhary, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner served up-to 25.11.2000. He denied that the persons junior to the petitioner are serving under him.

10. Ex. RW1/A is the mandays chart relating to the petitioner.

11. Ex. RW1/B (Mark-A) is the copy of the retrenchment notice dated 21.10.2000 which was sent to the petitioner under registered cover by the respondent by taking recourse to the provisions of Section 25-F of the Act. In this notice, it was mentioned that due to the non-availability of the work and the funds, the services of the petitioner are no longer required w.e.f. 26.11.2000 (afternoon). The retrenchment compensation amounting to Rs.4590/- was also remitted to the petitioner through a cheque alongwith the notice Ex. RW1/B.

12. Ex. RW1/C is the copy of the counterfoil of the cheque of retrenchment compensation which was issued by the respondent in the name of the petitioner.

13. Ex. RW1/D is the copy of the envelop of the registered letter which was despatched to the petitioner by the respondent. As per endorsement made by the postal authorities, the acceptance of the registered letter was refused by the petitioner/addressee, because of which it was returned to the sender (respondent).

14. Ex. RW1/E is the seniority list of daily waged staff of the office of the respondent who remained on the rolls up-to 31.12.2000.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of July, 1994 and he worked as such up-to 25.11.2000. The

version of the petitioner is that w.e.f. 26.11.2000 his services were wrongly and illegally terminated by the respondent by a verbal order. While denying the said fact the respondent has pleaded that the petitioner and more than 350 other workers were surplus. Their services were not required due to want of the funds and the work. For this reason, the services of the surplus labourers (including the petitioner) were dispensed with by taking recourse to the provisions of Section 25-F of the Act and adopting the principle of 'last come first go'. The retrenchment notice Ex. RW1/B dated 21.10.2000 and the retrenchment compensation were sent to the petitioner under registered cover which he refused to receive.

16. The endorsement made by postal authorities on the registered envelop Ex. RW1/D unfolds that its acceptance was refused by the petitioner. It is well known that all official acts are presumed to be correctly performed. Therefore, it cannot be said that a wrong endorsement was made on the registered letter by the postal staff. An employer cannot compel an employee/workman to receive the termination notice and the retrenchment compensation etc. Therefore, it can be safely said that at the time of the termination of the services of the petitioner, Section 25-F of the Act was duly complied with by the respondent.

17. The respondent has placed on the file the seniority list of daily waged beldars as on 30.6.2012 (mandays up-to 31.12.2011). It depicts that the persons junior to the petitioner are serving the respondent/department. Not only this, after 26.11.2000 i.e. the date of disengagement of the petitioner, new/fresh hands were appointed by the respondent. There is nothing on the record to show that at the time of engaging new/fresh hands an opportunity of re-employment was afforded to the petitioner by the respondent. This clearly shows that the respondent has flouted the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified. The mandays chart Ex. RW1/A clarifies that the petitioner had worked for more than 240 days in a block of 12 calendar months anterior to the date of his termination

18. Such being the situation, I have no hesitation to conclude that the termination of the services of the petitioner by the respondent is wrong and illegal.

19. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

20. Not pressed.

Issue No. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

23. The petitioner (PW1) in his cross-examination admitted that he earns his livelihood by doing the work of agriculture and serving in MANREGA Scheme. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he was not gainfully employed. He is, thus, not entitled to the back wages.

24. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 4)

25. As a sequel to my findings on the various issues above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 26.11.2000 except back wages. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 503/2009
Date of Institution : 20.11.2009
Date of Decision :19.11.2012

Shri Moti Ram s/o Shri Bhimu, r/o Village & P.O. Mohal, Tehsil Sachani, Tehsil & Distt.
Kullu, (HP) . . . *Petitioner.*

Versus

1. State of H.P. through Secretary Settlement, Shimla, H.P.
2. Settlement Officer, Dharamshala, Distt. Kangra, H.P.
3. Assistant Settlement Officer Kullu, Distt. Kullu, H.P. . . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B.B. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Katoch, DDA

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Moti Ram s/o Sh. Bhimu by the Settlement Officer, Dharamshala, Distt. Kangra, H.P. vide office Order/Letter no. KGS/Account/01-12-2003-1633, dated 05.6.2007 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits and amount of compensation the above worker is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his wife Smt. Shakuntla was serving as a sweeper under the respondents. She worked from the year 1997 to 2005 and died in harness. After her demise, he (petitioner) was appointed as a daily waged sweeper by the respondents on compassionate grounds in the month of May, 2005. He worked continuously with the respondents from 5th June, 2005 to 2nd May, 2007 and completed 240 days of work in each and every calendar year of his engagement. His services have been wrongly and illegally terminated by the respondents by a verbal order w.e.f. 02.5.2007. He was serving in the office of the respondent No.3. On 27.4.2007 he fell ill. Due to the ailment, he could not attend his duties from 27.4.2007 to 01.5.2007. On 02.5.2007, he reported for duty and submitted the medical certificate to the Senior Assistant (Nazir) in the office of the respondent No.3. The Senior Assistant refused to accept the medical certificate. Consequently, he (petitioner) sent the medical certificate through registered post to the respondent No.3. The payment for the month of April, 2007 was made to him (petitioner) after deducting the salary for four days. He was told not to come to the office again and talk to the respondent No.3 who was on tour. The Senior Assistant also proceeded on leave. On 03.5.2007, when he (petitioner) went to the office to attend to his duties, he found that one Shri Payar Chand (Raju) s/o Shri Shyam Chand, r/o Badah has been appointed as a Safai Karamchari in his place by the respondents. He (petitioner) was not allowed to work by the respondents so as to adjust Shri Payar Chand. On 11.7.2007, he received a letter from the respondent No.3. In the said letter it was mentioned that his services have been terminated. Wrong and false allegations were leveled against him. He requested the respondents to reinstate him in service, but in vain. Before his disengagement no opportunity of being heard was afforded to him. He has been removed from service by the respondents wrongly, illegally, arbitrarily as well as in violation of the provisions contained in the Industrial Disputes Act, 1947 (14 of 1947) ('the Act' for short). He could not attend to his duties due to the ill health which was beyond his control. His services have been disengaged by the respondents so as to accommodate their henchman.

As such, as is apparent from the prayer clause of the petition/statement of clam, the petitioner has claimed the following relief(s) in this case.

“the act of respondents where by service of petitioner has been terminated be declared null and void and petitioner may kindly be reinstated and allowed to join in previous place of posting and he be granted all the consequential benefits w.e.f.2-5-2007 from the date of illegal termination and ancillary relief from 10-7-2007 from which date, the petitioner was condemn unheard as such petitioner please be allowed to join his previous place of posting after calling for the relevant record of concerned department, petition please to allowed and justice be done”.

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioner has no

enforceable cause of action. The petition is hit by the vice of delay and laches on the part of the petitioner. By undertaking the settlement operation, they (respondents) are/were performing the sovereign function of the State. They do not fall under the definition of the industry as given in the Act. This Court/Tribunal has no jurisdiction to hear and decide the present matter. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petition is bad for non-joinder of the necessary parties and mis-joinder of the parties. After the termination of the petitioner, Sh. Payar Chand has been appointed as a part time sweeper. The services of Shri Payar Chand were engaged after following the due process.

On merits, it has been owned that the petitioner was appointed as a part time sweeper for 04 hours daily by the respondent No.2 in place of his wife Smt. Shakuntla after her death. The copy of the appointment order dated 14.6.2005 relating to the petitioner is annexure R-II. Disciplinary action was initiated against the petitioner on account of his willful absence from duty from time to time. His services were dispensed with and the punishment was inflicted by way of disciplinary action per order dated 05.6.2007 the copy of which is annexure R-I. The mandays chart of the petitioner is annexure R-III. The petitioner was engaged by the respondent No.2 who is performing the sovereign function of the settlement of land holdings in the notified area of District Kullu. He (petitioner) was engaged for four hours daily. He is not entitled to any benefit under Section 25-B of the Act or the protection under the Act. It has been disputed that on 27.4.2007, the petitioner fell ill because of which he could not attend his duties up-to 01.5.2007. On 26.4.2007, a notice of willful absence from duty was issued to the petitioner by the respondent No. 3. Instead of responding to the notice the petitioner again absented from duty. The respondent No. 3 had no option except to report the matter to the respondent No. 2. Keeping in view the requirement of the office of the respondent No.3 for cleaning and sweeping as well as on account of willful absence of the petitioner from duty, Shri Payar Chand was engaged in place of the petitioner w.e.f. 01.5.2007. On a subsequent date i.e. 15.6.2007, the petitioner tried to justify his unauthorized absence by producing the medical certificate alongwith an application. The application and the medical certificate were sent through registered post by the petitioner. The matter with regard to the re-engagement of the petitioner could not be considered at that time because a person had already been engaged in his place. Moreover, the medical certificate had not been issued by an authorized medical officer of the government hospital and the petitioner had not intimated the office immediately regarding his illness. Letter dated 10.7.2007 was written by the respondent No.3 to the petitioner. Photocopy of the medical certificate was forwarded by the petitioner. Due to the willful absence of the petitioner, they (respondents) had no alternative but to immediately engage the services of another part time sweeper. At the relevant time the work of minor repair and white washing was being carried in the office of the respondent No.3 where the petitioner was engaged. Due opportunity of being heard was provided to the petitioner. Instead of responding to the notice he willfully absented from duty. The petitioner never visited the office of the respondent No.3 on 02.5.2007 and thereafter. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondents pray that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been pleaded that the termination order dated 05.6.2007 is illegal. The absence from duty was neither deliberate nor willful. His services have been terminated malafidely.

5. Per order dated 08.6.2011, following issues were struck by my Id. Predecessor :

1. Whether the termination of the petitioner w.e.f. 05.6.2007 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so, to what effect the petitioner is entitled to?

..OPP

2. Whether the reference is not maintainable as the petitioner was alleged to have not been retrenched but remove by way of punishment by inflicted of disciplinary action as alleged. If so, to what effect thereto?
3. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Partly Yes Partly No
 Issue No. 2 : No. The punishment has been wrongly Inflicted.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Moti Ram stepped into the witness box as PW1. He reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he had sent the intimation regarding his illness per letter dated 18.6.2007 Ex. PW1/A only under registered cover per postal receipt Ex. PW1/B. Ex. R1 is the envelop of the registered letter despatched by him. He denied that the medical certificate produced by him is forged and fabricated. He admitted that in the month of April, 2007, the work of white washing and repair was in progress in the office of the respondent No.3. He denied that to avoid working more, he intentionally absented from duty. He also denied that after the employment of Shri Payar Chand, no work is available for him in the office of the respondent No.3 and he has instituted a phoney petition to grab the government job.

10. Dr. Rajinder Thakur (PW2) runs Rajindra Clinic at Bhuntar. He stated that the petitioner was under his treatment from 27.4.2007 onwards. He (PW2) had advised five days bed rest to the petitioner. Ex. PW2/A (previously Mark-A) is the OPD Card issued by him, whereas, Ex. PW2/B (earlier Mark-B) is the medical certificate for leave issued by him (PW2). In the cross-examination, he denied that a false certificate was issued by him in the name of the petitioner.

11. Conversely, Shri T.D. Bhardwaj, Assistant Commissioner, Kullu who is also holding the additional charge of Assistant Settlement Officer, Kullu (respondent No.3) testified as RW1. In his affidavit Ex. RW1/A submitted under Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by the respondents. In the cross-examination, he admitted that as per the record the petitioner worked from 05.6.2005 to May, 2007 and completed 240 days of service. He does not know that the petitioner fell ill on 27.4.2007 because of which he could not attend the office up-to 01.5.2007. As per the record, Shri Payar Chand has been appointed in place of the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner.

12. Mark-R2 (subsequently exhibited as Ex. RW1/H) is the copy of the medical certificate produced by the petitioner before the respondents.

13. Ex. RW1/B is the copy of an office order dated 05.6.2007 issued by the respondent No.2. It depicts that the services of the petitioner were retrenched and in his place Shri Payar Chand was appointed as a part time Safai Karamchari for four hours daily.

14. Ex. RW1/C is the copy of the office order dated 14.6.2005 issued by the respondent No.2. It reveals that after the expiry of Smt. Shakuntla Devi, her husband Shri Moti Ram (petitioner) was appointed as a Safai Karamchari on compassionate grounds for four hours daily in the office of the respondent No.3.

15. Ex. RW1/D is the mandays chart relating to the petitioner.

16. Ex. RW1/E is the copy of the notification dated 09th February, 1995 issued by the Secretary (Revenue) to the Government of Himachal Pradesh. It clarifies that the record of rights of District Kullu was ordered to be revised.

17. Ex. RW1/F is the copy of the warning letter dated 26th April, 2007 sent to the petitioner by the respondent No.3.

18. Ex. RW1/G is the copy of an application submitted in the office of the respondent No.3 by the petitioner. It corresponds to Ex. PW1/A.

19. Ex. RW1/I is the copy of the letter dated 10th July, 2007 written to the petitioner by the respondent No.3.

20. It is the admitted case of the parties that the services of the petitioner were engaged as a part time Safai Karamchari in the office of the respondent No.3 per office order dated 14th June, 2005 the copy of which is Ex. RW1/C. The mandays chart Ex. RW1/D clarifies that the petitioner served in the office of the respondent No.3 as a part time sweeper for four hours daily from 14.5.2005 to 30.4.2007.

21. The version of the petitioner is that on 27.4.2007, he fell ill because of which he could not attend his duties from that date to 01.5.2007. On 02.5.2007, he went to the office and produced the medical certificate of illness. Senior Assistant (Nazir) in the office of the respondent No.3 refused to accept the medical certificate which was subsequently sent by him to the respondent No.3 under registered cover. On 03.5.2007, when he (petitioner) went to the office again to join his duties, Shri Payar Chand had already been appointed by the respondents as a Safai Karamchari in his place.

The respondents have taken the plea that the work and conduct of the petitioner was unsatisfactory. He willfully absented from duty as the repair and white washing work in the office of the respondent No.3 was in progress and the petitioner was required to work more. The petitioner did not send any intimation to the office regarding his alleged ailment. A false medical certificate was produced by the petitioner subsequently to justify his absence from duty. Disciplinary action was taken against the petitioner and he was removed from service as a measure of punishment.

22. There is nothing on the record to show that the petitioner was charge sheeted by the respondents for his alleged misconduct and some domestic inquiry was conducted against him before his disengagement. Therefore, the punishment inflicted by the respondents without following the prescribed procedure is patently wrong and illegal.

23. Perusal of the mandays chart Ex. RW1/D unfolds that the petitioner had completed 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 05.6.2007 as envisaged under Section 25-B of the Act.

Section 25-F of the Act postulates as under:-

“25-F. **Conditions precedent to retrenchment of workmen.**-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

24. There is nothing on the record to prove that the provisions of the above quoted Section were complied with by the respondents before the termination of the services of the petitioner. Therefore, it can be safely said that the respondents have contravened the provisions of Section 25-F of the Act.

25. Admittedly, Shri Payar Chand was appointed as a part time sweeper by the respondents per office order dated 05.6.2007, the copy of which is Ex. RW1/B, in place of the petitioner. There is nothing on the file to establish that at the time of engaging new/fresh hands an opportunity of re-employment was afforded to the petitioner. Thus, the action of the respondent is also violative of Section 25-H of the Act. The termination of the services of the petitioner by the respondents is illegal and unjustified. So far as the assertion of the respondents is concerned to the effect that this Court has no jurisdiction to entertain and decide the present petition, the same deserves outright rejection in view of the observations made by our Hon'ble High Court in Civil Writ Petition (T) No.9554/2008 titled as Mohinder Singh vs. State of H.P. & anr. decided on 26.4.2010 as well as Civil Writ Petition (T) No.9552/2008 titled as Durga Dass vs. State of H.P. and another decided on 29.4.2010.

26. While testifying in the Court as PW1, the petitioner has given his age as 47 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he was not gainfully employed. For these reasons he is not entitled to the back wages.

27. These issues are decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 3)

28. As a sequel to my findings on issues No.1 and 2 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondents are directed to reengage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 05.6.2007 except back wages. Parties to bear their own costs. However, it is made clear that the respondents will have every right to initiate disciplinary proceedings against the petitioner for his alleged willful absence from duty and take action against him in accordance with law.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 478/2009

Date of Institution : 20.11.2009

Date of Decision : 26.11.2012

Smt. Munni Devi d/o Shri Mohan Lal, r/o Village Tindi, P.O. Agahar Tindi, Sub Tehsil Udaipur, District Lahaul & Spiti, H.P.

..Petitioner.

Versus

Divisional Forest Officer, Lahaul Forest Division Keylong, District Lahaul & Spiti, H.P.

....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. H.C. Gautam, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Munni Devi D/O Shri Mohal Lal by Divisional Forest Officer, Lahaul Forest Division Keylong, District Lahaul & Spiti, H.P. w.e.f. 31.08.1999 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is proper and justified? If not, what relief of service benefits and amount of compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged by the respondent as a Wireless Operator on daily wage basis w.e.f. 21.11.1998 in the office of Range Officer, Tindi. She served the respondent/department continuously up-to 30.8.1999. On the next day i.e. 31.8.1999, her services were terminated by the respondent by a verbal order. Neither any notice was served upon her nor she was charge-sheeted. She is a poor lady having no source of income except the employment in question. The post of

Wireless Operator is still lying vacant in the office of Range Officer, Tindi. Her services have been terminated arbitrarily without assigning any reason. The act and conduct of the respondent is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947) ('the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“the respondent may be directed to take back the applicant as wireless operator and not to give any break and her services be treated as continuous of the date of her appointment to till date and wages with interest of termination period also be awarded to the applicant and justice be done in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. On merits, it has been owned that the relationship of employer and employee exists between the parties. The petitioner was appointed as a daily paid wireless set attendant temporarily w.e.f. 01.12.1998 per letter dated 21.11.1998. She worked intermittently from December, 1998 to August, 1999. Her mandays chart is annexure R-I. The appointment letter is annexure R-II. There is/was no sanctioned post of wireless operator/attendant in Tindi Range till date. The petitioner is not a skilled wireless operator/attendant. She was engaged as a daily paid labourer to attend the Punwire set which had limited range restricted to the jurisdiction of Tindi Forest Block only. The services of the petitioner were not terminated as alleged. Since there is no post of wireless operator/attendant, the question of the said post lying vacant does not arise. Actually, the petitioner got married to one Shri Suresh Kumar of Shimla District. Shri Suresh Kumar is serving as a constable in the police department. The petitioner left Lahaul & Spiti District with her husband. She abandoned the job without any intimation to the functionaries of the forest department. None has been deployed in place of the petitioner. In the forest department, daily waged labourers are engaged to perform the seasonal works subject to the availability of the funds and the works. The petitioner cannot be termed as a workman within the meaning of the Act. The petitioner worked for only eight days in the month of August, 1999. She received the payment for those eight days in the month of November, 1999 without any protest. The instant industrial dispute has been raised by the petitioner per demand notice issued in the year 2006. All this speaks volumes about her interest in the job. Wireless Operators are class-III employees. They are recruited through the Himachal Pradesh Subordinate Services Selection Board only. The wireless system which was operational in the years 1998-1999 was disbanded w.e.f. the year 2000. No person junior to the petitioner has been retained in service or engaged/re-engaged. No provision of the Act has been flouted. Since the petitioner left the job of her own. She is not entitled to any protection under the Act. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been disputed that after tying the nuptial knot, she abandoned the job. She served the respondent/department regularly from 21.11.1998 to 30.8.1999.

5. Per order dated 02.11.2011, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 31.7.1999 is violative of the provisions of Sections 25-F & 25-H of the I.D. Act, 1947 as alleged. If so, to what relief the petitioner is entitled to?

..OPP

- Issue No. 1 : No
Issue No. 2 : Yes
Issue No. 3 : Not pressed
Relief. : Claim petition dismissed vide operative portion of the Award.

ISSUES No. 1 and 2

14. Ex. RW1/C is the copy of the demand notice dated 20.11.2006 served upon the respondent by the petitioner.

15. Ex. RW1/D is the copy of the reply to the demand notice submitted before the Labour Officer by the respondent during the conciliation proceedings.

16. No reference has been received from the appropriate Government regarding providing the artificial breaks, if any, to the petitioner by the respondent. Therefore, the said controversy between the parties cannot be looked into by this Court being beyond the terms of the reference.

17. The assertion of the petitioner (PW1) that her presence was not marked by the respondent for the months of February and July, 1999 does not appear to be true as the said fact has not been pleaded by her in the petition/statement of claim and the rejoinder. The statement to that effect made by the petitioner (PW1) being beyond her pleadings cannot be read.

18. It is the admitted case of the respondent that the services of the petitioner were engaged as a wireless operator/attendant per letter dated 21.11.1998 (Ex.PW1/A) and she served the department from 01.12.1998 to 08.8.1999. The petitioner has maintained that she served the respondent continuously from 21.11.1998 to 30.8.1999. On 31.8.1999, her services were wrongly and illegally terminated by the respondent. While denying the said fact the respondent has pleaded that the petitioner abandoned the job of her own accord and free volition after getting married to Shri Suresh Kumar, constable.

19. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that she has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was given to the petitioner asking her to resume the duties after she allegedly left the job. Absence from duty is serious misconduct. Admittedly, no disciplinary proceeding were initiated against the petitioner by the respondent for her alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

20. Now comes the question as to what relief the petitioner is entitled to?

21. The mandays chart Ex. RW1/A clarifies that the petitioner did not complete 160 days of work (Lahaul & Spiti is tribal area) in a block of 12 calendar months preceding the date of her termination as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

22. The petitioner has not disclosed the name of any person junior to her who was retained in service by the respondent at the time of her disengagement. Not only this, she has failed to divulge the name of any person who was appointed by the respondent after her retrenchment. For these reasons, it cannot be said that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

23. Otherwise too, the evidence available on the file clarifies that no post of wireless operator/attendant is there in the office of Range Officer, Tindi. The petitioner was engaged to operate the wireless set on temporary basis only pursuant to the recommendations made by the Hon'ble MLA of Lahaul & Spiti per letter Ex. PW1/A. Wireless operators are Class-III employees. They are recruited only after being selected by the Himachal Pradesh Subordinate Services Selection Board.

24. It appears to me that the avarice of the petitioner to grab the Government job and money has forced her to file a totally false and baseless claim. She is not entitled to any relief. The claim petition is not maintainable.

25. These issues are decided against the petitioner and in favour of her opponent.

ISSUE NO. 3

26. Not pressed.

RELIEF (ISSUE NO. 4)

27. Taking into account my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3000/-.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 46/2007

Date of Institution : 26.4.2007

Date of Decision : 19.11.2012

Shri Naresh Kumar s/o Shri Jeet Ram, r/o Village Uba, P.O Shiva Badar, Tehsil Sadar, District Mandi, H.P.

....Petitioner.

Versus

1. The Superintending Engineer, Larji Construction Circle No.1 & II, H.P.S.E.B., Sarabain, P.O. Bhunter, District Kullu, H.P.
2. The Senior Executive Engineer, Larji Construction Division No. IV, H.P.S.E.B., Sarabain, P.O. Bhunter, District Kullu, H.P.
3. The Senior Executive Engineer, Larji Construction Division No.III, H.P.S.E.B., Pandoh District Mandi, H.P.

....Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.S. Kaundal, Adv.
For the Respondent(s) : Sh. J.S. Chauhan, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Naresh Kumar s/o Shri Jeet Ram workman by the (1) Superintending Engineer, Larji Construction Circle No.1 & II, H.P.S.E.B., Sarabain, P.O. Bhunter, District Kullu, H.P. (2) The Senior Executive Engineer, Larji Construction Division No. IV, H.P.S.E.B., Sarabain, P.O. Bhunter, District Kullu, H.P. (3) The Senior Executive Engineer, Larji Construction Division No.III, H.P.S.E.B., Pandoh District Mandi, H.P. w.e.f. 01.06.2004 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

“1. That the applicant was engaged as Conductor/cleaner-cumconductor by the respondents on 26.12.1997 at Thalout and Pandoh in District Mandi. His duty was running of vehicle i.e. cleaning and washing of vehicle and to assist the Driver while running of vehicle from one station to another for carriage of project goods to the project site from Chandigarh and Parwanoo and back etc. as Conductor. The mode of engagement was on work order basis from 26.12.1997 to 31.9.2004.

2. That the applicant has been paid less wages as fixed under the Minimum Wages Act, 1948, for the category of cleaner-cumconductor/Conductor by the Govt. of H.P. It is submitted that 22 motor vehicles plying including heavy trucks numbering twelve. That the establishment of fleet of motor transport in the project and Board is termed as Motor Transport undertaking within the purview of Motor Transport Act, 1961 and the services of Driver and Conductor, cleaner cum conductors engaged for driving, cleaning and conducting of vehicle job are covered as Motor Transport Workers under the said Act.

3. That the H.P. Government has fixed minimum rates of wages for the Scheduled Employment in the Public Motor Transport and the wages of cleaners and cleaners cum conductors job have been fixed and revised from time to time as follows:-

Date	Rates of wages for cleaner/cleaner cum conductor	Conductor	Remarks
1.10.98 to 31.12.98	1593/- PM	Rs.1952/- P.M.	
1.1.99 to 31.7.2001.	1736/- PM	Rs.2102/- PM	
1-8-01 to 31-7-2002.	1886/- PM	Rs.2193/- PM.	
1.8.2002 to 31.7.2003	2051/- PM	Rs.2222/- PM.	
1.8.2003 to 31.5.2004	2216/PM	Rs.2462/- PM.	

Out of the above entitlement the respondents have only paid less wages amounting to Rs. as follows:-

			Difference due
1.10.98 to 31.12.98	Rs.1373/-	180/-PM	Rs.540/-
1.1.99 to 31.7.2001	Rs.1530/-	206/- PM	Rs.6,386/-
1.8.2001 to 31.7.02	Rs.1650/-	236/- PM	Rs.2596/-

1.8.2002 to 31.7.2003	Rs.1800/-	251/- PM	Rs.2751/-
1.8.2003 to 31.5.2004	Rs.1950/-	266/- PM.	Rs.2394/-

Total arrear due: Rs.14,667/-			

It is further submitted that Section 25-F of the Minimum Wages Act, 1948, which states that any contract or agreement whether made for or after the commencement of this Act, whereby an employee either relinquishes or reduce his rights to a minimum rate of wages of any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rates of wages fixed under this Act. The definition of term "employee" has been defined as under:- Section 2 (e) "Employee" means any person who is employed for hire or reward to do any work skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out worker to whom any articles or materials are given out by any other persons to be made up cleaned, washed altered, ornamented, finished, repairs adopted or otherwise or processed for the purpose of trade is to be carried out either in the home of the outworker or in some other person where the process is to be carried out either in the home of the outworker or in some other premise not being premise under the control and management of that either persons and also includes an employee declared to be an employee by the Appropriate Government, but does not include the member of the Armed Forces of the Union".

4. That since the applicant has been dropped out of his right to the payment of minimum wages, the present system of calculating out or engagement on work order basis is null and void and the applicant is entitled for arrears on account of revision of minimum wages for the job of cleaner-cum-conductor/conductor. The system of engagement on work order basis amounting to unfair trade practice and the applicant is, therefore, governed under the Standing Orders wherein no such provisions exist as to the engagement of Cleaner cum conductor and workman on work-order basis. This system is violative of the provisions of Industrial Employment (Standing Orders), Act, 1946. It may be submitted that neither the applicant has been registered as Conductor nor any written agreement has been signed. It is also submitted that the applicant has himself worked as Conductor in the vehicle of the Project and has done the service of cleaning and washing of vehicles personally for the job which was given to him from time to time. The applicant is entitled for gratuity and other legal dues.

The Executive Engineer, Larji Construction Division No. IV has illegally discontinued services of the applicant w.e.f. 1-6-2004 and has not called the applicant again for re-engagement/re-employment in spite of order of respondent No.1 vide letter No. HPSEB/LCC-1/5-35-04-1459-60, dated 16.6.2004 to the respondent No.2, to re-engage the applicant, but on the order of respondent No.1, the respondent No. 2 has not re-engaged the applicant till today.

RELIEF(S) SOUGHT:-

In view of the facts stated above, the applicant seeks the following relief(s):-

- The respondents be directed to regularize the services of the applicant on the same post and capacity with all consequential benefits including seniority.
- The respondents be also directed to pay arrears of wages accordingly.
- And/or any other relief for which the applicant is entitled may also be granted to him.
- Cost of the application be also awarded to the applicant".

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or vested right of the petitioner has been infringed. The petitioner is estopped from filing the petition by his act, conduct and acquiescence. The claim petition is time barred. The same has not been properly instituted and constituted. The petition is bad for non-joinder of the necessary parties and mis-joinder of the parties. On merits, paras No.1 to 4 of the reply are reproduced below verbatim for ready reference.

- “1. The contents of para No.1 of the claim petition are false, wrong, incorrect hence denied. However in reply to this para it is submitted that during the period of project work the respondents No.2 had called the notices invited quotation/Tenders for carried out the work of washing and cleaning the stationary vehicles in the office of the replying respondent No.2 which is purely on the contract basis. The applicant alongwith others had submitted the quotations in the office of replying respondent No.2 for carry out the said work and the applicant and others had shown the different rates in their quotations for the said work after scrutinizing the quotation of the applicant and others, the said work was awarded to the applicant, who had submitted the quotation showing lowest rates for the said work and as such as per the norms and rules of replying respondents, the said work was awarded to the applicant on contract basis on dated 24.12.1997 to 28.02.1998 for 67 days and the copy of the same is attached herewith as R-1 and after that the replying respondents again called the N.I.Q. for the same work from time to time and the applicant being the lowest tender holder was again awarded the same work/job, and as such the said work of the respondents was completed on 30.06.2001, thereafter, the applicant never applied for the said work. The copies of the work orders from 23.12.1997 to 30.06.2001 are attached as Annexure R-1 to R-12 herewith. It is false and wrong that the applicant was ever engaged as Beldar/Cleaner with the vehicle on the Muster Roll basis as alleged. There is no relation between the applicant and respondents as workmen and employer. It is denied that the applicant was engaged on work order basis from 26.12.1997 to 31.05.2004. The applicant only worked with the respondents as a contractor and he has been paid as per quoted rates.

Moreover, the said quotations were/was also use to be called as per the availability of the work and as such the applicant had not worked continued on contract basis w.e.f. 24.12.1997 to 30.06.2001, as alleged. It is further submitted that the applicant only done the said contract work with the replying respondents upto 30.6.2001 in the manner stated above and now this office has been re-designated as “Thirot construction Division H.P. S.E.B. Pandoh” and thereafter, the applicant might have worked with another Offices in the same manner and for which the said office will submit the detailed reply.

2. The contents of para No.2 of the petition are absolutely wrong, incorrect, hence denied. It is further submitted that the contract work of the respondents does not fall within the provisions of the Transport Act as alleged in this para. The false and baseless allegations have been mentioned in this para.
3. The averments contained in para No.3 of the petition are wrong, incorrect, hence denied. The contents/provisions as mentioned in this para are not applicable to the applicant in view of the submissions made above. The applicant is not entitled for any wages mentioned in this para, because the said work has been awarded to the applicant on contract basis and the quoted rates which have been agreed by him. The provision of minimum wages Act, are not applicable to the petitioner. The applicant

has concealed the true facts before the Hon'ble Court and has not come with clean hand and as such the petition is liable to be dismissed.

4. The allegations contained in this para are wrong, incorrect, hence denied, in view of the submissions made above. It is wrong and denied that the replying respondents No. 2 has violated any provisions of law in any manner. It is further submitted that the said work has been awarded to the applicant and he has to do the work personally or through other person as per the terms and conditions of the contract. It is further submitted that to execute any non-technical work which is not specialized work, small amount can be done or execute by any person on contract basis without any registration as contractor. The contents of the petitioner/applicant does not fall within the purview of any provisions of law. The standing orders of HPSEB has already been withdrawn and are not applicable to the respondents in any manner. Moreover, the claim of the petitioner is false and not maintainable at this belated stage. It is wrong and denied that the applicant is entitled for any gratuity and other legal dues as alleged. The contents of without number of para do not pertains to the replying respondents as stated above. The applicant executed the contract work only upto 2001 with the respondents as thereafter, the work of the respondents finished and no further N.I.Q. was called. The prayer para of the petition along with its sub-paras (a to c) are totally wrong, illegal, hence denied in view of the submissions made herein above. The applicant is not entitled for any relief as claimed".

In these circumstances, the respondents pray that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been pleaded that he served the respondents from 26.12.1997 to 31.5.2004. He was not engaged as a contractor He worked as cleaner-cum-conductor on the vehicles of the project. No agreement was signed as alleged. The mode of engagement was on work order basis. He is not registered as a contractor.

5. Per order dated 12.5.2010, following issues were struck by my Id. Predecessor:

- (i) Whether the termination of the petitioner w.e.f. 01.6.2004 in violation of the provision of I.D. Act, 1947 as alleged. If so to what relief the petitioner is entitled to?
..OPP
- (ii) Whether the petition is time barred as alleged. If so to what effect?
..OPR
- (iii) Whether the petitioner is estopped to file and maintain the reference as alleged?
..OPR
- (iv) Whether the petition is bad for non-joinder and mis-joinder of necessary parties as alleged. If so its effect?
..OPR
- (v) Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. (i) : No
Issue No.(ii) : Not pressed

Issue No. (iii) : Yes
 Issue No. (iv) : Not pressed
 Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

8. Shri Naresh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Mark-A (which corresponds to Ex. P1) i.e. the copy of the letter dated 16.6.2004 written by the Superintending Engineer, Larji Const. Circle-I, HPSEB, Sarabai to Sr. Executive Engineer, Larji Const. Division –IV, HPSEB Sarabai. As per this letter, the Superintending Engineer requested the Sr. Executive Engineer to continue the services of the petitioner as a conductor on work order basis as his services are/were still required. In the cross-examination, he admitted that the department got several works of the project executed on contract basis. He also admitted that the respondents had invited quotations on work order basis for washing the vehicles of the project. He denied that he too had submitted his quotations to work on work order basis which were accepted as the rates quoted by him were the lowest. He denied that the work for 67 days only from 24.12.1997 to 29.2.1998 was awarded to him. He admitted that the work order Mark-A (later on exhibited as Ex. RW1/A) bears his signatures in the circle. He also admitted that Rs.3065/- as per this work order were received by him from the respondents. He denied that the work of cleanliness of the trucks etc. used to be provided to him on work order basis from time to time as the rates quoted by him used to be the lowest. He admitted that the work orders Marks –D to O bear his signatures. He has also received the payment from the respondents. After completion of the work in the year 2001, no work/contract was awarded to him by the respondents. He denied that he did not serve the respondents up-to the year 2004 as well as no relationship of employer and employee exists between him and his adversaries.

9. Conversely, Shri Chander Shekhar, Assistant Engineer, HPSEB, Thiroth testified as RW1. He corroborated on oath the contents of the reply submitted by the respondents. He also proved various work orders and the payments made to the petitioner from time to time viz. Marks – A to O and Exts. RW1/A to C. In the cross-examination, he stated that the petitioner was awarded the work for cleaning the vehicles. The payment used to be made to him on work order basis. He denied that less money was paid to the petitioner and he has given a phoney statement.

10. Section 10 (4) of the Act postulates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the payment of less wages to the petitioner by the respondents as claimed. Therefore, the said controversy, if any, between the parties cannot be gone into by this Court being beyond the terms of the reference.

11. It is the admitted case of the petitioner that he used to work with the respondents on work order basis. The evidence available on the record goes to show that the respondents used to issue the notices inviting quotations for maintenance/cleanliness of the vehicles etc. of the project on work order basis. The petitioner and others used to submit their quotations. The quotations of the petitioner being the lowest used to be accepted and he was provided the work on work order basis from time to time. Admittedly, the entire payment as per the work orders has already been made to the petitioner by his opponents.

12. The petitioner simply used to work with the respondents on contract basis. His services were never engaged as a daily wager by the respondents. The petitioner is not a workman as defined under Section 2(s) of the Act. No relationship of master and servant ever existed between the parties. The petitioner (PW1) in his cross-examination admitted that the work of the project was completed in the year 2001. After that, no work was awarded to him by the respondents on contract basis.

13. The admissions made by the petitioner go to show that his services were never engaged as a conductor/cleaner by the respondents. The petitioner worked on contract basis on different occasions with the respondents. Whatever work was executed by the petitioner the payment for the same was made to him by his opponents.

14. It appears to me that the avarice of the petitioner to grab the government job and money has forced him to file a totally false and baseless claim. He (petitioner) is not entitled to any relief. As the services of the petitioner were never engaged by the respondents, the question of the termination of his services does not arise.

15. This issue is decided against the petitioner and in favour of the respondents.

ISSUES NO. 2 AND 4

16. Not pressed.

ISSUE NO. 3

17. Taking into account my findings on issue No.1 and the admissions made by the petitioner, it is held that he is estopped from filing the claim petition by his act and conduct.

18. This issue is also decided against the petitioner and in favour of the respondents.

RELIEF (ISSUE NO. 5)

19. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3000/-

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 99/2006

Date of Institution : 30.8.2006

Date of Decision : 03.11.2012

Smt. Prem Lata w/o Shri Amarjeet, r/o Village Bali-Jhelra, P.O. Binolla, Tehsil Sadar,
District Bilaspur, H.P.

....*Petitioner.*

Versus

The Child Development Project Officer, Block Sadar, District Bilaspur.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Anil Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Smt. Prem Lata w/o Shri Amarjeet, workman by the Child Development Project Officer, Bilaspur, District Bilaspur, H.P. w.e.f. November, 1998 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that she was called for the interview by the SDM Sadar, Bilaspur, the Chairman of the Selection Committee. She was selected for the post of Anganwari Karyakarta (Worker) and appointed as such in the month of April, 1998. Her basic pay was fixed as Rs.700/- per month. She was also entitled to Rs.48/- as daily alongwith the travelling allowance as and when she was to go on tour. She joined as the Anganwari Worker at Bal Vikash Pariyojna, Dali, Tehsil Sadar, District Bilaspur, H.P. She worked as such up-to the month of September, 1998. On 1st October, 1998, the respondent and his subordinates came to Bal Vikash Pariyojna, Dali and took away the attendance register. It was orally conveyed to her that she will not continue as an Anganwari Worker as her services have been terminated. Thereafter, she (petitioner) approached the office of the respondent many times. The respondent kept on making lame excuses that she will be given the post of the Anganwari Worker. Since the respondent failed to provide the job, a complaint was made by her to the District Employment Officer, Bilaspur, who sent the same to the Commissioner. At the time of the interview, 106 candidates were selected by the committee headed by the SDM. All the selected candidates (including her) were given the appointment. Before the termination of her services neither any show cause notice was served upon her nor she was given an opportunity of being heard. Her services have been disengaged by the respondent wrongly and illegally as well as in contravention of the provisions of the Industrial Disputes Act, 1947 (14 of 1947) hereinafter referred to as ‘the Act’. She is entitled to the re-employment alongwith all other consequential benefits.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case.

“the services of the Petitioner be re-instated w.e.f. 1st October 1998 and the basis @ Rs.700/- P.M. w.e.f. October, 1998 till 2003 and thereafter basis @ Rs.1200/- P.M. alongwith other benefits, be ordered to be paid to the petitioner and any other relief, which this Hon’ble Tribunal deems fit, be granted”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition/reference is time barred. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner was initially appointed only for 89 days on contractual basis. As per the terms and conditions of the appointment contained in the office order, the services of the petitioner could be terminated at any time without serving any notice. The dispute raised by the petitioner does not fall within the definition of an industrial dispute. The petition is bad for non-joinder of the necessary parties and mis-joinder of the parties. An interview was held on 01.7.1999 for appointing the Anganwari Workers. The petitioner absented and did not participate in the interview.

On merits, it has been denied that the petitioner was appointed as an Anganwari Worker by SDM Sadar, Bilaspur. Her services were engaged by him (respondent) per letter dated 24.3.1998 purely on ad-hoc basis for a period of 89 days. The services of the petitioner were terminated vide memo dated 15.9.1998 w.e.f. 19.9.1998. She was directed to hand over the charge to the helper of AWC Dali. The petitioner absented from the personal interviews conducted on 01.7.1999 for AWC Dali. Smt. Nisha Kumari w/o Shri Babu Ram was selected for the post of the Anganwari Worker. She is continuously working on the said post till date. The services of the petitioner have been terminated rightly as per the terms and conditions of the appointment. She has been paid the wages for the period she served the department. No provision of the Act has been infringed. The petitioner is not entitled to any relief. An Anganwari Worker is supposed to do social service as per the spirit of ICDS Department. The dispute raised by the petitioner does not fall within the jurisdiction of this Court. She was not a daily paid worker. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 20.6.2008, following issues were struck by one of my ld. Predecessors:

1. Whether the termination of services of the petitioner Prem Lata by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation she is entitled to?
..OPP.
2. Whether the petitioner’s claim does not fall within the purview of the Industrial Disputes Act, 1947?
..OPR.
3. Whether the petition is barred by time?
..OPR.
4. Whether the petitioner is guilty of suppressio very?
..OPR.
5. Whether the petition is bad for misjoinder of the parties and non joinder of the parties?
..OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : Not pressed

Issue No. 3 : Not pressed

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1

8. The petitioner Smt. Prem Lata stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she admitted that she was appointed for 89 days on contract basis by the respondent/department. She also admitted that she was appointed by the respondent on ad-hoc basis. She feigned ignorance about the fact that an interview was conducted by the respondent for the appointment of the Anganwari Worker(s). She was not called for the interview by the respondent/department. She admitted that on 01.7.1999, one Smt. Nisha Kumari w/o Shri Babu Ram was appointed as the Anganwari Worker and she is still working. She denied that she has instituted a phoney petition to grab the government job.

9. Shri Chaman Lal (PW2) and Shri Roop Lal (PW3) supported the cause of the petitioner. Exts. PW2/A and PW3/A respectively are the affidavits submitted by them in accordance with Order 18 Rule 4 CPC. They also stated that the petitioner had appeared in the interview and was selected on merits. Her absence has been wrongly marked by the selection committee. In the cross-examination, PW2 admitted that the petitioner is his sister-in-law. Both these witnesses denied that they are telling the lies.

10. Conversely, Smt. Neelam Tadu, Child Development Project Officer, Bilaspur (respondent) testified as RW1. In her affidavit Ex. RW1/A preferred under Order 18 Rule 4 CPC, she corroborated on oath the contents of the reply filed by her. In her cross-examination, she deposed that the petitioner was appointed as a stop gap arrangement. She was given the appointment on contract basis twice for 89 days each. The Anganwari Workers have been appointed after undergoing the selection process. She admitted that the interviews were held and the petitioner did not participate in the same.

11. Ex. RW1/B is the copy of the office order dated 24th March, 1998 issued by the respondent. It depicts that the petitioner was appointed as an Anganwari Worker on temporary basis for 89 days. Her services were liable to be terminated at any time without assigning any reason.

12. Ex. RW1/C is the copy of the office order dated 15.9.1998 issued by the respondent. It unfolds that the petitioner was removed from service w.e.f. 19.9.1998 (afternoon).

13. Ex. RW1/D is the mandays chart relating to the petitioner. It clarifies that she joined her duties on 25.3.1998 and served for 89 days up-to 21st June, 1998. After that the petitioner worked for 89 days from 22nd June, 1998 to 18th September, 1998.

14. Ex. RW1/E is the copy of a letter dated 23.9.1998 written by the respondent to the petitioner and others. Vide this letter, the petitioner was directed to hand over the charge of the Centre to the Assistant.
15. Ex. RW1/F is the copy of the letter dated 18.1.1997 written by the respondent to the Pradhans of various Panchayats intimating them that the Anganwari Workers are to be appointed. The desirous female candidates should apply on the plain paper by mentioning their educational qualifications etc.
16. Ex. RW1/G is the copy of the letter dated 15.6.1999 written by the respondent to various candidates whose names figure in Ex. RW1/G1. Vide this letter the candidates were informed that they should appear in the interviews to be held on 01.7.1999 at 10 A.M. for being appointed as Anganwari Workers/helpers.
17. Ex. RW1/H is the result/detail of the interview conducted for the post of Anganwari Worker. It clarifies that the petitioner did not take part in the personal interview despite the fact that she had scored the highest marks on the basis of her qualification.
18. Ex. RW1/I is the copy of the despatch register of the office of the respondent. It reveals that a letter was despatched to the petitioner intimating her that she should participate in the interview for the post of Anganwari Worker.
19. From the evidence available on the record it can be gathered that the services of the petitioner were engaged on temporary basis as stopgap arrangement for 89 days only at the first instance per office order dated 24.3.1998, the copy of which is Ex. RW1/B. The services of the petitioner were liable to be terminated at any time without assigning any reason. The mandays chart Ex. RW1/D unfolds that the petitioner served in two spells for 89 days each.
20. Interviews were conducted by the respondent for the appointment of the Anganwari Workers. The petitioner, who had applied for the said post, was asked to appear in the personal interview on 01.7.1999 at 10 A.M. per letter Ex. RW1/G. The interview letter was duly despatched to the petitioner as is evident from Ex. RW1/I i.e. the copy of the despatch register. It is well known that all official acts are presumed to be correctly performed.
21. The result-cum-attendance sheet Ex. RW1/H clarifies that the petitioner remained absent at the time of the personal interview because of which she was not selected. Admittedly, Smt. Nisha Kumari was selected after the interview and is working as Anganwari Worker uptil now. Since the petitioner did not participate in the selection process and take part in the interview, she cannot make any grievance on the count that she was not selected or appointed as an Anganwari Worker by the respondent.
22. The petitioner (PW1) nowhere stated that she had taken part in the personal interview. Rather, during her cross-examination, she testified that she was not called by the respondent/department for the interview. PWs 2 and 3 stated that the petitioner had participated in the interview and was selected on merits. However, she has been wrongly marked absent. This clearly shows that the petitioner and her witnesses are telling nothing else except a bundle of lies. It is not the case of the petitioner that to favour someone else she was wrongly marked absent by the respondent. As already mentioned, the services of the petitioner were engaged purely on temporary basis as stop gap arrangement. She has no right to continue in service as she failed to participate in the selection process/interview. The automatic termination of the services of the petitioner does not amount to retrenchment within the meaning of Section 2 (oo) (bb) of the Act.
23. Such being the situation, I have no hesitation to conclude that the petitioner is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of the respondent.

ISSUES NO. 2, 3, 4 and 5

25. Not pressed.

RELIEF (ISSUE NO. 6)

26. As a sequel to my findings on the issue No.1 above, the instant claim petition being meritless fails. It is, therefore, dismissed. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 593/2008
Date of Institution : 29.10.2008
Date of Decision : 26.11.2012

Shri Rajesh Kumar s/o Shri Byas Dev, r/o Village Balla, P.O. Drahal, Tehsil Joginder Nagar, Distt. Mandi, H.P.

....Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division, Joginder Nagar, Distt. Mandi, H.P.

....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether giving breaks after every 15 days or so through verbal orders in service of Sh. Rajesh Kumar (Beldar on Daily Wages) S/O Sh. Byas Dev by the Executive Engineer, HPPWD (B&R) Division, Joginder Nagar, Distt. Mandi, during his service w.e.f. 01.11.1998 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on muster roll basis w.e.f. November, 1998. During the period of his employment, the respondent used to interrupt his services by a verbal order wrongly and illegally. He was provided the artificial/fictional break by the respondent almost from 16th day of every month without any fault on his (petitioner's) part and without following the procedure prescribed under the Industrial Disputes Act, 1947 (14 of 1947) ('the Act' for short) as well as the Rules framed there under. The respondent used to engage and disengage his services by way of victimization and not in good faith. False allegations of absence from duty were leveled against him by the respondent. The breaks were given by the respondent so as to favour the workmen junior to him (petitioner) regardless of their merit. The respondent acted partially and used to terminate his service time and again so as to deprive him (petitioner) from the status and privileges of a permanent workman. The respondent also wanted to defeat his right of regularization. No seniority list has been maintained by the respondent for years together. The principle of 'last come first go' has not been adhered to. His preferential right of engagement etc. was ignored every month till the month of August, 2008. Smt. Mathura Devi, Smt. Rumla Devi, Sh. Balak Ram, Sh. Tek Chand, Sh. Nag Raj, Sh. Inder Sh. Prakash, Sh. Sunder, Sh. Sohan Singh, Sh. Dina Nath, Sh. Mansha Ram and Smt. Guddi Devi etc. were employed by the respondent in the year 2000. Shri Jagmohan s/o Shri Saran Dass and Shri Desh Raj s/o Shri Megh Singh etc. were employed by the respondent in the year 2002. Shri Sanjeev Chaudhary and Shri Aminder Pal etc. were appointed in the year 2003, whereas, S/Sh. Kishori Lal and Nihal Chand etc. were engaged in the year 2004. All the above named workmen are junior to him (petitioner). They were allowed to work continuously by the respondent. He (petitioner) is/was always ready and willing to work. Artificial breaks were given by the respondent without following the due procedure in order to help the junior workmen in violation of the provisions of Sections 25-G and 25-H of the Act. He (petitioner) preferred O.A. No. (M) 79/2004 before the erstwhile Hon'ble Himachal Pradesh State Administrative Tribunal for the redressal of his grievances. The said Original Application was allowed by the Hon'ble Administrative Tribunal on 20.5.2004. The directions issued by the Hon'ble Administrative Tribunal, have not been complied by the respondent. He (petitioner) has been discriminated. The services of his juniors have been regularized. The period of fictional/illegal breaks is required to be counted towards his continuous service for the purpose of regularization.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“the period of artificial breaks/fictional breaks/illegal breaks/interrupted service may kindly be considered for the purpose of seniority and respondent may consider the period of fictional breaks for the purpose of back wages, regularization and for all consequential benefits, for which the workman/applicant shall ever pray”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. The subject matter of the present reference/petition has already been decided by the Hon'ble Administrative Tribunal per order dated 20.5.2004 passed in O.A. (M) No. 79/2004. As the controversy has been adjudicated upon by competent Court of law, the petitioner is debarred from

starting second round of litigation on the same subject matter. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on muster roll basis as a daily waged beldar in the year 1998. Mandays chart is annexure R-II. No artificial breaks were ever given to the petitioner as alleged. The services of the petitioner were engaged as per the requirement of work and availability of the funds pursuant to the verbal requests made by him from time to time. At the time of engaging the services of the petitioner he was duly made aware that his services have been temporarily engaged for a particular period i.e. 10 to 15 days as the case may be since he (respondent) is/was not in a position to provide him the work for the whole month. The principle of 'last come first go' was duly complied with. The petitioner has not been victimized. The persons whose names have been disclosed by the petitioner are senior to him. His (respondent's) office regularly deals with development activities. The labourers are engaged and disengaged as per the availability of the work and the funds. The mandays chart of all the workmen whose names have been divulged by the petitioner (except S/Sh. Sunder and Parkash) is annexure R-III. The petitioner was provided the work every month from January, 1999 to August, 2007. He is working continuously thereafter. The present controversy has already been finally decided by the Hon'ble Administrative Tribunal per order dated 20.5.2004. The claim petition is hit by the principle of res-judicata. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he (petitioner) had also instituted a miscellaneous application under Rule 23 of the Himachal Pradesh Administrative Tribunal (Procedure) Rules, 1986 against the respondent. In that application, he prayed that necessary directions be issued to comply with the order of the Hon'ble Administrative Tribunal in a time bound manner and in the alternative, the respondent be punished as per law for committing the contempt of the lawful order passed by a competent Court. Such miscellaneous application was allowed by the Hon'ble Administrative Tribunal. The respondent was directed to do the needful, but in vain. Due to these reasons, he (petitioner) has been forced to institute the present reference/claim petition. Work and funds were available with the respondent/employer. It was never conveyed to him (petitioner) that his services have been engaged temporarily for a specific period/work.

5. Per order dated 08.6.2011, following issues were struck by my Id. Predecessor:

1. Whether the action of the respondent in granting fictional breaks to the petitioner after every 15 days is illegal and violative of the provisions of the I.D. Act, 1947 as alleged. If so, to what relief the petitioner is entitled to?
..OPP
2. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Redundant

Issue No.2 : Yes

Issue No.3 : Redundant

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 2

8. This issue is being taken up by me first for discussion as my findings on the same will impinge the outcome of other issues.

9. The petitioner Shri Rajesh Kumar stepped into the witness box as PW1. He reiterated on oath the contents of the petition/statement of claim in its entirety.

10. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD (B&R) Division Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A submitted under Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

11. Ex. P1 is the copy of the order dated 20.5.2004 pronounced by the Hon'ble Administrative Tribunal in O.A. (M) NO. 89/2004 titled as Rajesh Kumar vs. The State of Himachal Pradesh, through its Secretary, HPPWD and another.

12. Ex. P2 is the copy of the order dated July 19, 2007 rendered by the Hon'ble Administrative Tribunal in Contempt/Misc. Application No. (M) 237/2006 in O.A. (M) 89/2004 titled as Rajesh Kumar vs. Executive Engineer, HPPWD (B&R) Division Joginder Nagar and another.

13. Ex. RW1/B is the copy of the Original Application under Section 19 of the Administrative Tribunal Act, 1985 moved by the petitioner before the Hon'ble Administrative Tribunals against the respondent.

14. Ex. RW1/C is the mandays chart relating to the petitioner.

15. Ex. RW1/D is the detail of year-wise working days of the workers namely Sh. Nag Raj and seventeen others.

16. It is the admitted case of the parties that for providing the fictional breaks to the petitioner by the respondent, the former had instituted O.A. (M) No.89/2004 before the Hon'ble Administrative Tribunal camp at Mandi. The said Original Application was finally decided by the Hon'ble Tribunal per order dated 20.5.2004, the copy of which is Ex. P1. The operative part of the order reads thus:-

“Taking into consideration this fact that the applicant is still working and the particular statement given by the Assistant Engineer, the respondents are directed not to give fictional breaks to the applicant if the work, and funds are available. Respondents are further directed not to terminate the services of the applicant except in accordance with law and to comply with the principle of ‘First come last go’. Respondents are further directed to maintain the seniority of such type of persons as per rule. With these observations original application stands finally disposed of”.

17. In the rejoinder, the petitioner has maintained that the respondent failed to comply with the order dated 20.5.2004 (Ex. P1) because of which he was forced to prefer

Contempt/Miscellaneous Application No. (M) 237/2006 against the respondent before the Hon'ble Administrative Tribunal. The said Contempt/Miscellaneous Application was disposed of by the Hon'ble Administrative Tribunal vide order dated July 19, 2007 the copy of which is Ex. P2. The order passed on the said date by the Hon'ble Tribunal is reproduced below verbatim for ready reference:-

“19.7.2007 Present: Shri K.S. Guleria, Advocate, for the petitioner Shri B.S. Parmar, Addl. Advocate General, for Respondent State. As per the averments made in the M.A. the same is allowed. However, respondents are directed to do the needful within a period of two months from this order. M.A. stands disposed of”.

18. Browsing of Exts. P1 and P2 unfolds that the controversy raised by the petitioner in the present reference/claim petition has already been decided by competent Court of law. There is nothing on the file to establish that the orders Exts. P1 and P2 have been upset till date. Orders Exts. P1 and P2 have already attained finality. Since the matter directly and substantially in issue between the same parties in the present reference/claim petition has already been heard and finally decided directly and substantially in the previous litigation viz. Original Application No. (M) 89/2004, the instant claim petition is hit by the principle of res-judicata as envisaged under Section 11 of the Code of Civil Procedure, 1908. To my mind, if the respondent has flouted the orders Exts. P1 and P2, the only remedy available with the petitioner is to approach the appropriate Court/Forum by instituting a contempt petition.

19. That being so, I have no hesitation to conclude that the reference/claim petition is not maintainable. The petitioner is not entitled to any relief.

20. This issue is decided against the petitioner and in favour of the respondent.

ISSUES No. 1 AND 3

21. Taking into account my findings on issue No.2, these issues have become redundant. Discussing the same at length will serve no fruitful purpose. Rather, it will be like ‘flogging a dead horse’.

22. Otherwise too, by now, it is firmly settled that if the Court finds that the case/petition is to be not maintainable, it need not give findings on the rest of the issues.

23. These issues are decided as such.

RELIEF (ISSUE NO. 4)

24. As a sequel to my findings on issue No. 2 above, the present claim petition being not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 93/2010

Date of Institution : 23.4.2010

Date of Decision : 26.11.2012

Shri Ram Singh s/o Shri Lekh Ram, r/o Village Seyota, P.O. Tambol, Tehsil Sh. Naina Devi Ji, Distt. Bilaspur, H.P.

....*Petitioner.*

Versus

The Additional Superintending Engineer, HPSEB (E) Division Bilaspur, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh S.S. Sippy, AR.

For the Respondent : Sh. H. S. Thakur, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ram Singh s/o Sh. Lekh Ram workman by the Additional Superintending Engineer, HPSEB (E) Division Bilaspur through verbal orders w.e.f. 26.5.1995 and without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on 26.12.1993. He worked as such up-to 25.5.1995 i.e. for 139 days only. On 26.5.1995, his services were terminated by a verbal order. Neither any notice was given to him (petitioner) nor he was informed about the misconduct, if any. He approached the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal for his reinstatement and preferred O.A. No. 993/2003. Such Original Application was disposed of by the Hon'ble Tribunal on 03.6.2005 by holding that it has no jurisdiction to deal with the same. In the year 1997, 14 new T-mates have been appointed by the respondent. Their names are S/Sh. Ashok Singh, Gurdass Ram, Rakesh Kumar, Tek Chand, Karam Dev, Pawan Kumar, Rajinder Kumar, Chet Ram, Jagdish Ram, Bhagat Ram, Sada Ram, Jai Prakash, Rajesh Kumar and Karam Singh etc.. He (petitioner) was not given an opportunity of re-employment which amounts to unfair labour practice. Not only this, in the year 1999, four new workers were engaged by the respondent. Their names are S/Sh. Roop Singh, Babu Ram and Nain Singh etc. All of them are still serving the respondent/Board. His (petitioner's) seniority has been disrupted by the respondent. The latter has failed to abide by the principle of 'last come first go'. The work is still available with the respondent/Board. From the date of his retrenchment, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947) ('the Act' for short) as well as clause 14 (2) of the Standing Orders 1946 issued by the Board.

As such, he (petitioner) prays that the termination order dated 26.5.1995 be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the HPSEB (Himachal Pradesh State Electricity Board) is a Body Corporate incorporated under the statute having perpetual succession and common seal. It has the power to acquire and hold both moveable and immovable property. The HPSEB can sue and be sued in its name. He (respondent) is merely a functionary of the HPSEB/Board. Since the Board has not been joined as a party to the petition, the same is bad for non-joinder of the necessary parties and mis-joinder of the parties. The claim petition has not been legally constituted. The same is not maintainable in the present form. The petitioner was initially engaged as a beldar w.e.f. 26.12.1993. He worked with certain interruptions up-to 25.5.1995. The petitioner did not complete 240 days of continuous service in any calendar year of his appointment. The engagement of the petitioner was for the specific period and particular work as a casual worker. On the completion of the work, his services automatically came to an end. As the petitioner did not serve for 240 days, no notice was required to be served upon him. He is/was not entitled to any compensation under the Act. The petitioner did not acquire the status of a temporary workman. He remained a casual worker only. The claim put forth by the petitioner is hopelessly time barred. He (petitioner) has no cause of action. No legal or vested right of the petitioner has been infringed. On merits, it has been owned that the petitioner worked as a daily waged beldar from 26.12.1993 to 25.5.1995. He was only a casual worker. It stands admitted that the petitioner had instituted O.A. No. 993/2003 before the Hon'ble Administrative Tribunal which was dismissed on 03.6.2005 for want of jurisdiction. The petitioner was not removed from service as alleged. Actually, from 26.5.1995 onwards, he never turned up to work. As and when the work of casual nature was available the petitioner never approached him (respondent) for re-engagement. Since the petitioner abandoned the job of his own accord and free will, he is not entitled to any protection under the Act. The principle of 'last come first go' does not apply in this case. It has not been disputed that the new/fresh hands were engaged in the years 1997 and 1999. No provision of the Act or Standing Orders has been infringed. Since the petitioner left the job voluntarily, he is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that during the period of his employment, the respondent used to give him the artificial breaks. He was not allowed to complete 240 days of work by the respondent/Board.

5. Per order dated 16.03.2012, following issues were struck:-

1. Whether the termination of services of the petitioner by the respondent w.e.f. 26.5.1995 is violative of the provisions of Industrial Disputes Act, 1947 as alleged?

. .OPP

3. Whether the petition is bad for non-joinder of the necessary parties?

4. . .OPR

3. Whether the petition is not maintainable in the present form?

. .OPR

4. Whether the petition is time barred as alleged. If so, its effect?

. .OPR

5. Whether the petitioner has a cause of action?

6. . .OPP

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
Issue No.2 : Not pressed
Issue No.3 : Not pressed
Issue No.4 : No
Issue No.5 : Yes
Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 5

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Ram Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that he left the job willingly.

10. Ex. PW1/B is the copy of the order dated 30th April, 2001 pronounced by the Hon'ble Administrative Tribunal in O.A. No. 3618/1999 titled as Shri Roop Singh and others vs. Himachal Pradesh State Electricity Board and another.

11. No evidence has been adduced by the respondent.

12. No reference has been received from the appropriate Government regarding providing the fictional breaks, if any, to the petitioner by the respondent. Therefore, the said controversy between the parties cannot be looked into by this Court being beyond the terms of the reference.

13. The respondent has not led any oral or documentary evidence to show that the services of the petitioner were engaged for a specific period and work.

14. It is the admitted case of the respondent that the petitioner was appointed as a daily waged beldar on 26.12.1993 and he worked intermittently upto 25.5.1995. The version of the petitioner is that on 26.5.1995, his services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition.

15. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be said that he has left/abandoned the job. There is nothing on the file to prove that a notice was served upon the petitioner by the respondent calling upon him to resume his duties after he allegedly left the same. Even no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

16. The petitioner (PW1) categorically stated that in the years 1997 and 1999, new/fresh hands were engaged by the respondent. Their names are S/Sh. Ashok Singh and Gurdas Ram etc.. The same has not been challenged by the respondent during the cross-examination. It is the basic

law that if a fact remains un-rebutted and unchallenged during the cross-examination the same is to be taken as admitted by the other side. In his reply also the respondent has not categorically denied that new/fresh hands were employed in the years 1997 and 1999. There is not even an iota of evidence on the file to show that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner. Therefore, it can be safely said that the respondent has contravened the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-H of the Act a workman need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Such being the situation, it is concluded that the petitioner has a cause of action. The retrenchment of the services of the petitioner by the respondent is wrong and illegal.

17A. These issues are decided in favour of the petitioner and against his opponent.

ISSUES No. 2 and 3

18. Not pressed.

ISSUE NO. 4

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

21. While testifying in the Court as PW1, the petitioner has given his age as 37 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages etc.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

23. As a sequel to my findings on the various issues above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 26.5.1995 except back wages. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 85/2007

Date of Institution : 26.6.2007

Date of Decision : 19.11.2012

Shri Subhash Chand s/o Shri Ghanshyam, r/o Village Killing, P.O. Sukibain, Tehsil Chachiot, District Mandi, H.P.

....Petitioner.

Versus

1. The Superintending Engineer, Larji Construction Circle No.1 & II, H.P.S.E.B., Sarabain, P.O. Bhunter, District Kullu, H.P.
2. The Senior Executive Engineer, Larji Construction Division No. IV, H.P.S.E.B., Sarabain, P.O. Bhunter, District Kullu, H.P.
3. The Senior Executive Engineer, Larji Construction Division No.III, H.P.S.E.B., Pandoh District Mandi, H.P.

....Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.S. Kaundal, Adv.

For the Respondent(s) : Sh. J.S. Chauhan, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Subhash Chand s/o Shri Ghanshyam workman by the (1) Superintending Engineer, Larji Construction Circle No.1 & II, H.P.S.E.B., Sarabain, P.O. Bhunter, District Kullu, H.P. (2) The Senior Executive Engineer, Larji Construction Division No. IV, H.P.S.E.B., Sarabain, P.O. Bhunter, District Kullu, H.P. (3) The Senior Executive Engineer, Larji Construction Division No.III, H.P.S.E.B., Pandoh

District Mandi, H.P. w.e.f. 01.06.2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

- “1. That the applicant was engaged as Conductor/cleaner-cumconductor by the respondents on 1.10.1998. The applicant's duty was plying/running of vehicle i.e. cleaning and washing of vehicles and also to assist the driver while plying/running of vehicles from one station to another for the carriage of goods to project site from the Chandigarh, Parwanoo and back etc. as Conductor. Mode of engagement was on work order basis from 1.10.1998 to 31.5.2004.
2. That the applicant has been paid less wages as fixed under the Minimum Wages Act, 1948, for the category of Cleaner-cum-Conductor by the Govt. of Himachal Pradesh. It is submitted that 22 motor vehicles are/were plying including heavy trucks twelve in number. The establishment of fleet of motor transport in the Project and the Board is termed as Motor Transport undertaking within the preview of the Motor Transport Works Act, 1961 and the services of driver and conductors engaged for driving, cleaning and conducting of vehicles are covered under Motor Transport Workers Act.
3. That the H.P. Govt. has fixed minimum rates of wages for the employment in the Public Motor Transport and the wages of cleaner cum conductor have been fixed and revised from time to time as under:-

Date	Rates of wages for Cleaner cum Conductors	Conductor	Remarks
1.10.98 to 31.12.98	1593/- PM	Rs.1952/- P.M.	
1.9.99 to 31.7.2001.	1776/- PM	Rs.2102/- PM	
1-9-2001 to 31-7-2002.	1886/- PM	Rs.2193/- PM.	
1.8.2002 to 31.7.2003	2051/- PM	Rs.2232/- PM.	
1.8.2003 to 31.5.04	2216/PM	Rs.2462/- PM.	

Out of the above entitlement, the respondents have only paid less wages amounting to Rs. as follows:-

		Difference due
1.10.98 to 11.12.98	Rs.1373/-	PM Rs.540/-
1.1.1999 to 31.7.2001	Rs.1530/-	Rs.6386/-
1.8.2001 to 31.7.2002	Rs.1650/-	Rs.2596/-
1.8.2002 to 31.7.2003	Rs.1800/-	Rs.2751/-
1.8.2003 to 31.5.2004	Rs.1950/-	Rs.2394/-

		Total : Rs.14,667/-

Further your kind intention is invited to section 25-F of the Minimum Wages Act, 1948 which states as under:- 25: Contracting out: Any contract or agreement whether made for

after the commencement of this Act whereby an employee either relinquishes or reduces his rights to a minimum rate of wages or any privilege or concession accruing to him under this Act, shall be null and void in so far as it purports to reduce the minimum rates of wages fixed under this Act. The definition of term “employee” has been defined as under:-

Section 2 (e) “Employee” means any person who is employed for hire or reward to do any work skilled, or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out worker to whom any articles or material are given out by another person to be made up cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purpose of the process is to be carried out either in the home of the out worker or in some other premises not being premises under the control and management of that other person and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed forces of the Union.

4. That since we have been deprived of our right to the payment of minimum wages, the present system of contracting out of engagement on work order basis is null and void and the applicant is entitled for arrear on account of revision of minimum wages for the job of cleaner cum conductor/ conductor. The system of engagement on work order basis amounted to unfair labour practice and the applicant is, therefore, governed under the Standing Order of H.P. State Electricity Board wherein no such provision exist as to the engagement of cleaner cum conductor and workman on work order basis. It may be submitted that neither the applicant has been registered as a contractor nor any written agreement has been signed. It is also submitted that the applicant has himself worked as conductor in the vehicles of the project and has done the service of cleaning and washing of vehicle personally for the job, which was given to him from time to time. The applicant is also entitled for gratuity and legal dues etc.
5. That the Executive Engineer Larjee construction Division No. IV illegal discontinued the services of the applicant w.e.f. 1-6-2004 and has not called the applicant for re-employment inspite of the fact that department has asked him to re-engaged vide letter No.HPSEB/LCC/-1/5-35/04-1459-60, dated 16, June, 2004. It is, therefore, respectfully prayed that in view of the submissions made above, the respondents be directed to pay all arrear of wages as claimed above and further prayed that the applicant be re-engaged on the same post with the respondents and back seniority be ordered to be given to the applicant and be appointed whereas the work is available in the concerned department. And/or any other relief for which the applicant is entitled be also granted to the applicant and justice be done”.

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or vested right of the petitioner has been infringed. The petitioner is estopped from filing the petition by his act, conduct and acquiescence. The claim petition is time barred. The same has not been properly instituted and constituted. The petition is bad for non-joinder of the necessary parties and mis-joinder of the parties.

On merits, paras No.1 to 5 of the reply are reproduced below verbatim for ready reference.

- “1. Contents of Para No-1 of the petition are false, wrong, incorrect and not admitted to be correct. However, in reply to this para it is submitted that during the period of project work the respondents No-2 had called the notices invited quotation/Tenders for carried out the work of washing and cleaning the stationary vehicles in the office of the replying respondent No-2, which is purely on the contract basis. The applicant alongwith others had submitted the quotations in the office of replying respondent No-2 for carry out the said work and the applicant and others had shown the different rates in their quotations for the said work after scrutinizing the quotation of the applicant and others, the said work was awarded to the applicant, who had submitted the quotation showing lowest rate for the said work and as such as per the norms and rules of replying respondents, the said work was awarded to the applicant on dated 13-8-2000 to 12-11-2001. Copy of same is annexed herewith as Ann-R-1. And after completion of the said period the respondents have again called the NIQ and after completion of all the legal formalities the said similar work was further awarded to applicant in different period i.e. 14-11-2000 to 10-2-2001, 11-2-2001 to 31-3-2001, 1-5-2001 to 31-5-2001, 1-6-2001 to 30-6-2001. Copies of same are annexed herewith as Ann-R-2 to R-5. The said work was awarded by Larji construction Sub Division-16, under Division No-III Pandoh and thereafter the aforesaid work was completed in the above Sub Division and all the entire vehicles were transferred to Larji Construction Division No-4, H.P.S.E.B. Sara Bain, Distt. Kullu, H.P. and the similar work has also been awarded to the applicant after completion of all the procedural formalities in the office of Larji Construction Division No-4 H.P.S.E.B. Sara Bain under Sub Division NO-19 and 20 in the manner stated above with effect from 2-9-2001 to 20-11-2001, 21-11-2001 to 31-1-2002, 1-2-2002 to 31-3-2002, 1-4-2002 to 31-5-2002, 1-6-2002 to 31-7-2002, 1-8-2002 to 30-9-2002, 1-10-2002 to 30-11-2002, 1-12-2002 to 28-1-2003, 29-1-2003 to 28-3-2003, 29-3-2003 to 26-5-2003, 27-5-2003 to 24-7-2003, 25-7-2003 to 21-9-2003, and 22-9-2003 to 14-11-2003. Copies of same are annexed herewith as Ann-R-6 to R-18. The aforesaid work has been completed on dated 14-11-2003 and thereafter no work was awarded to the applicant. It is further submitted that after completion of the each work the awarded amount has also paid to the applicant/contractor, which fact is clear from the annexure annexed here in above. It is false and wrong that the applicant was ever engaged as Beldar/Cleaner with the vehicle on the Muster Roll basis as alleged. There is no relation between the applicant and respondents as workman and employer. It is denied that the applicant was engaged on work order from 13-8-2000 to 20-11-2001. The applicant only worked with the respondents as a contractor and he has been paid as per quoted rates. However, the said quotations were/was also use to be called as per the availability of the work and as such the applicant had not worked continued on contract basis as alleged. However, the last and final bill paid to the contractor vide bill/voucher No-53 is annexed herewith as Ann-R-19. In view of this it is submitted that the applicant has never been employed as baildar by the replying respondents and as such the applicant has made false and concocted story in this para and has concealed the true facts from the Ld. Tribunal.
2. The Contents of Para No.2 of the application are wrong, incorrect hence denied, in view of the submission made above. It is further submitted that the contract work of the respondents does not fall with in the provisions of the

Transport Act, as alleged in this para. The false and baseless allegations have been mentioned in this para.

3. The Contents of Para No-3 of the application are wrong, incorrect hence denied. The contents/provisions as mentioned in this para are not applicable to the applicant, in view of the submissions made above. The applicant is not entitled for any wages mentioned in this para, because the said work has been awarded to the applicant on contract basis and the quoted rates which have been agreed by him. The provisions of minimum wages Act, are not applicable to the applicant. The applicant has concealed the true facts before this Hon'ble Tribunal and has not come with clean hand and as such the application is liable to be dismissed.
4. That the allegations made in this para are wrong, incorrect hence denied, in view of the submissions made above. It is wrong and denied that the replying respondent No-2 has violated any provisions of law in any manner. It is further submitted that the said work has been awarded to the applicant on contract basis and he has to do the said work personally or through other persons as per the terms and conditions of the contract. It is further submitted that to execute any nontechnical work which is not specialized work pertaining to small amount can be done or execute by any person on contract basis with out any registration as contractor. The contents of the petitioner/applicant does not fall with in the purview of any provisions of law. The standing orders of H.P.S.E.B. has already been withdrawn and are not applicable to the respondents in any manner. Moreover, the claim of the applicant is false and not maintainable as this belated stage. It is wrong and denied that the applicant is entitled for any gratuity and other legal dues as alleged.
5. The Contents of Para No-5 of the application are wrong, incorrect hence denied. In reply to this para it is submitted that the aforesaid work was completed w.e.f. 14-11-2003 and thereafter no work as such required by the respondents. It is absolutely wrong and false that the respondents had discontinued the service of applicant. Prayer Para of the application is wrong, incorrect hence denied, in view of the submissions made here in above. The applicant is not entitled for the relief as claimed in this para of application. In these circumstances, the respondents pray that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been pleaded that he served the respondents from 01.10.1998 to 31.5.2004. He was not engaged as a contractor. He worked as cleaner-cum-conductor on the vehicles of the project. No agreement was signed as alleged. The mode of engagement was on work order basis. He is not registered as a contractor.

5. Per order dated 12.5.2010, following issues were struck by my ld. Predecessor:

- (i) Whether the termination of the petitioner w.e.f. 01.6.2004 in violation of the provision of I.D. Act, 1947 as alleged. If so to what relief the petitioner is entitled to? . . . OPP.
- (ii) Whether the petition is time barred as alleged. If so to what effect? . . . OPR.

- (iii) Whether the petitioner is estopped to file and maintain the reference as alleged?
- (iv) Whether the petition is bad for non-joinder and mis-joinder of necessary parties as alleged. If so its effect? . . OPR.
- (v) Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. (i) : No

Issue No. (ii) : Not pressed

Issue No. (iii) : Yes

Issue No. (iv) : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

8. Shri Subhash Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Mark-A (which corresponds to Ex. PX) i.e. the copy of the letter dated 16.6.2004 written by the Superintending Engineer, Larji Const. Circle-I, HPSEB, Sarabai to Sr. Executive Engineer, Larji Const. Division –IV, HPSEB Sarabai. As per this letter the Superintending Engineer requested the Sr. Executive Engineer to continue the services of the petitioner as a conductor on work order basis as his services are/were still required.

In the cross-examination, he denied that the department got several works of the project executed on contract basis. He admitted that the respondents had invited quotations on work order basis for washing the vehicles of the project. He denied that he too had submitted his quotations to work on work order basis which were accepted as the rates quoted by him were the lowest. He denied that as per lowest quotations the work was awarded to him. He admitted that the work orders Marks D to F bear his signatures in the circle. He also stated that from 14.11.2000 to 10.2.2000 Rs.4539/- as per the work order were received by him from the respondents. He denied that all the work used to be provided to him on work order basis from time to time. He even denied that no relationship of employer and employee exists between him and his adversaries.

9. Conversely, Shri Khushhal Chand, Superintending Engineer, HPPCL Quality Control, Sundernagar testified as RW1. He corroborated on oath the contents of the reply submitted by the respondents. He also proved the various work orders and the payments made to the petitioner from time to time viz. Exts. RW1/A to R. In the cross-examination, he stated that the petitioner was awarded the work for cleaning the vehicles. The payment used to be made to him on work order basis. He denied that less payments were made to the petitioner and he has given a phoney statement.

10. Section 10 (4) of the Act postulates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the

payment of less wages to the petitioner by the respondents as claimed. Therefore, the said controversy, if any, between the parties cannot be gone into by this Court being beyond the terms of the reference.

11. It is the admitted case of the petitioner that he used to work with the respondents on work order basis. The evidence available on the record goes to show that the respondents used to issue the notices inviting quotations for maintenance/cleanliness of the vehicles etc. of the project on work order basis. The petitioner and others used to submit their quotations. The quotations of the petitioner being the lowest used to be accepted and he was provided the work on work order basis from time to time. Admittedly, the entire payment as per the work orders has already been made to the petitioner by his opponents.

12. The petitioner simply used to work with the respondents on contract basis. His services were never engaged as a daily wager by the respondents. The petitioner is not a workman as defined under Section 2(s) of the Act. No relationship of master and servant ever existed between the parties.

13. The admissions made by the petitioner go to show that his services were never engaged as a conductor/cleaner by the respondents. He (petitioner) worked on contract basis on different occasions with the respondents. Whatever work was executed by the petitioner the payment for the same was made to him by his opponents.

14. It appears to me that the avarice of the petitioner to grab the government job and money has forced him to file a totally false and baseless claim. He (petitioner) is not entitled to any relief. As the services of the petitioner were never engaged by the respondents, the question of the termination of his services does not arise.

15. This issue is decided against the petitioner and in favour of the respondents.

ISSUES NO. 2 AND 4

16. Not pressed.

ISSUE NO. 3

17. Taking into account my findings on issue No.1 and the admissions made by the petitioner, it is held that he is estopped from filing the claim petition by his act and conduct.

18. This issue is also decided against the petitioner and in favour of the respondents.

RELIEF (ISSUE NO. 5)

19. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition being meritless not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/-

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 265/2010

Date of Institution : 18.11.2010

Date of Decision : 01.11.2012

Shri Surender Kumar s/o Shri Chatro Ram, r/o Village Gailla, P.O. Sarol, Tehsil & Distt. Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD (B&R) Division Chamba, Distt. Chamba, (H.P.) . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. A. K. Jaryal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Sh. Surender Kumar s/o Sh. Chatro Ram, daily wage workman by the Executive Engineer, HPPWD Division (B&R) Chamba, Distt. Chamba (H.P.) w.e.f. January, 2005 without serving charge sheet & without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 and retaining the junior workmen, as alleged by worker, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he had instituted an Original Application bearing No. OA (D) 234/2003 before the erstwhile Hon’ble Himachal Pradesh State Administrative Tribunal, camp at Dharamshala. Such application was disposed of by the Hon’ble Tribunal with a direction to the respondent not to give the fictional breaks to him (petitioner) and not to terminate his daily paid services except in accordance with law. He served the respondent/department continuously for 11 years. Per letter/notice dated 29.11.2004, his services have been disengaged by the respondent by misinterpreting the order pronounced by the Hon’ble Administrative Tribunal in O.A. (D) No. 234/2003. Shri Umesh Handa and others, who had instituted O.A. (D) No. 581/2001 were also terminated by the respondent.

However, their services were re-engaged by the respondent due to certain extraneous considerations. In O.A. (D) No. 183/2000 titled as Tilak Raj and others vs. State of H.P. same order was passed by the Hon'ble Administrative Tribunal. The workmen namely Shri Tilak Raj etc. were allowed to complete 240 days of work in each and every calendar year of their engagement. Their services have also been regularized by the respondent in contravention of the law and the policy framed by the Government of Himachal Pradesh. He (petitioner) has been discriminated. His services were dispensed with without giving him an opportunity of being heard. At the time of his disengagement, the persons junior to him namely S/Sh. Umesh Handa, Chaman Lal, Vikarmo, Jarmo, Beli Ram, Tilak Raj s/o Rakhinu Ram, Tilak Raj s/o Teju Ram, Ramesh, Bishan Dass, Sanjay Kumar and Ganesh were retained in service by the respondent. During the period of his employment, the respondent used to give him the fictional breaks. His services have been retrenched without assigning any reason. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short).

As such, he (petitioner) prays that the termination order be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The same is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the petitioner had preferred O.A. (D) No. 234/2003 before the Hon'ble Administrative Tribunal. The said Original Application was decided by the Hon'ble Tribunal on merits per order dated 26.2.2004. It stands admitted that the termination notice dated 29.11.2004 was served upon the petitioner and his services were dispensed with. The termination notices were issued to the petitioner and other similarly situated workmen due to the non-availability of the funds after following the principle of 'last come first go'. The list of workmen to whom the notices were issued is annexure R-2 (A) to R-2 (L). The order dated 26.2.2004 rendered by the Hon'ble Administrative Tribunal is categorical in this regard. For the purpose of regularization, as per the prevailing policy of the Government, a workman has to complete 240 days of continuous service for 08-10 years every year. The petitioner did not complete requisite 240 days of work in any year of his employment. He worked intermittently. No artificial breaks were ever given to the petitioner. Moreover, the issue with regard to the fictional breaks has been duly settled by the Hon'ble Administrative Tribunal vide judgment dated 26.2.2004. The termination notice dated 29.11.2004 was given to the petitioner pursuant to the judgment dated 26.2.2004 passed by the Hon'ble Administrative Tribunal. The petitioner worked till January, 2005 as per the availability of the work and the funds. With effect from 04.1.2005, he left/abandoned the job despite the fact that the muster roll for the entire month of January, 2005 was issued in his name. S/Sh. Umesh Handa etc. worked in continuity with him (respondent). Some of the workmen whose names have been disclosed by the petitioner are senior to him. The petitioner is gainfully employed as an agriculturist. No person junior to the petitioner has been retained in service. The petitioner used to work intermittently. He cannot claim parity with the workmen who served continuously. Since the petitioner abandoned the job of his own, he is precluded from claiming benefit under the Act. No person junior to the petitioner has been engaged/re-engaged. No provision of the Act has been infringed. The petition is merit less.

In these circumstances, the respondent prays that the petition in hand be rejected.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 03.08.2012, following issues were struck:

1. Whether the termination of the services of the petitioner w.e.f. January, 2005 by the respondent is illegal and unjustified? . . OPP.
2. Whether the petition is not maintainable in the present form? . . OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . . OPR.
4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

8. The petitioner Shri Surender Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Ex. PW1/B i.e. copy of the termination notice dated 29.11.2004 served upon him by his adversary. In the cross-examination, he denied that the notice dated 29.11.2004 was issued by the respondent due to the non-availability of the work and the funds. He admitted that similar notices were issued to the other labourers as well. He denied that he did not complete the criteria of 240 days of work because of which he is not entitled to the regularization. Further, he denied that no fictional breaks were ever given to him by the respondent. He denied that he left the service willingly. He also denied that the persons, whose names have been disclosed by him in para No.3 of proof affidavit Ex. PW1/A, are senior to him. He refuted that he remained busy in the agricultural work because of which he voluntarily left the service.

9. Conversely, Shri D.S. Pathania, Executive Engineer, HPPWD Division Chamba (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that as per the record no notice was given to the petitioner calling upon him to resume his duties after he left the job. He also admitted that the persons junior to the petitioner are serving under him.

10. Ex. RW1/A is the mandays chart relating to the petitioner. 11. Ex. RW1/B is the copy of the muster roll issued by the respondent for the period 01.1.2005 to 31.1.2005. It depicts that the petitioner served the respondent/department up-to 04.1.2005.

12. Ex. RW1/C is the copy of the order dated February 26, 2004 pronounced by the Hon'ble Administrative Tribunal in O.A. (D) No. 236/2003 titled as Sh. Surinder & another vs. The State of H.P. & Ors.

13. Exts. RW1/D1 to D12 are the copies of the termination notices dated 29.11.2004 served upon S/Sh. Mohinder Kumar and Subhash Kumar etc. by the respondent.

14. Exts. RW1/E1 to E11 are the mandays charts of S/Sh. Umesh Kumar & others.

15. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

16. The mandays chart Ex. RW1/A depicts that the services of the petitioner were initially engaged by the respondent in the month of November, 1994 and he served the respondent/department intermittently up-to the month of January, 2005. It is an admitted fact that the termination notice Ex. PW1/B was served upon the petitioner by the respondent. The version of the respondent is that despite the issuance of the termination notice Ex. PW1/B, muster roll for the entire month of January, 2005 was issued in the name of the petitioner. However, he served the department only up-to 4th January, 2005 and thereafter left the job of his own accord and free volition. While denying the said fact, the petitioner has maintained that his services were wrongly and illegally terminated by the respondent in the month of January, 2005.

17. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was given to the petitioner asking him to resume his duties after he allegedly left the service. Absence from duty is serious misconduct. There is not even an iota of evidence on the file to show that some disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

18. The mandays chart Ex. RW1/A unfolds that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

19. The respondent (RW1) in his cross-examination admitted that the persons junior to the petitioner are working under him. This indicates that the respondent has failed to adhere to the principle of 'last come first go'. His action is violative of Section 25-G of the Act. For this reason, the termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act a workman need not complete 240 days of continuous service in a block of 12 calendar months anterior to the date/month of his termination.

20. This issue is decided in favour of the petitioner and against the respondent.

ISSUE No. 2

21. Not pressed.

ISSUE NO. 3

22. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

23. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

24. While testifying in the Court as PW1, the petitioner has given his age as 45 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

25. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

26. As a sequel to my findings on various issues above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. January, 2005 except back wages. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 113/2011

Date of Institution : 27.8.2011

Date of Decision : 01.11.2012

Shri Surinder Kumar s/o Shri Dev Raj, r/o Village Gailla, P.O. Sarol, Tehsil & Distt. Chamba, H.P. . . . Petitioner.

Versus

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. A.K. Jaryal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D. A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Surinder Kumar s/o Sh. Dev Raj, Village Gailla, P.O. Sarol, Tehsil & Distt. Chamba by the Executive Engineer, HPPWD (B&R) Division Chamba(H.P.) w.e.f. 12/2004, while retaining junior workers in service, as alleged by worker is legal and justified, if not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he had instituted an Original Application bearing No. OA (D) 236/2003 before the erstwhile Hon'ble Himachal Pradesh State Administrative Tribunal, camp at Dharamshala. Such application was disposed of by the Hon'ble Tribunal with a direction to the respondent not to give the fictional breaks to him (petitioner) and not to terminate his daily paid services except in accordance with law. He served the respondent/department continuously for 11 years. Per letter/notice dated 29.11.2004, his services have been disengaged by the respondent by misinterpreting the order pronounced by the Hon'ble Administrative Tribunal in O.A. (D) No. 236/2003. Shri Umesh Handa and others who had instituted O.A. (D) No. 581/200,1 were also terminated by the respondent. However, their services were re-engaged by the respondent due to certain extraneous considerations. In O.A. (D) No. 183/2000 titled as Tilak Raj and others vs. State of H.P. same order was passed by the Hon'ble Administrative Tribunal. The workmen namely Shri Tilak Raj etc. were allowed to complete 240 days of work in each and every calendar year of their engagement. Their services have also been regularized by the respondent in contravention of the law and the policy framed by the Government of Himachal Pradesh. He (petitioner) has been discriminated. His services were dispensed with without giving him an opportunity of being heard. At the time of his disengagement, the persons junior to him namely S/Sh. Umesh Handa, Chaman Lal, Vikarmo, Jarmo, Beli Ram, Tilak Raj s/o Rakhinu Ram, Tilak Raj s/o Teju Ram, Ramesh, Bishan Dass, Sanjay Kumar and Ganesh were retained in service by the respondent. During the period of his employment, the respondent used to give him the fictional breaks. His services have been retrenched without assigning any reason. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short).

As such, he (petitioner) prays that the termination order be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The same is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the petitioner had preferred O.A. (D) No. 236/2003 before the Hon'ble Administrative Tribunal. The said Original Application was decided by the Hon'ble Tribunal on merits per order dated 26.2.2004. It stands admitted that the termination notice dated 29.11.2004 was served upon the petitioner and his services were dispensed with. The termination notices were issued to the petitioner and other similarly situated workmen due to the non-availability of the funds after following the principle of 'last come first go'. The list of workmen to whom the notices were issued is annexure R-2 (A) to R-2 (L). The order dated 26.2.2004 rendered by the Hon'ble Administrative Tribunal is categorical in this regard. For the purpose of regularization, as per the prevailing policy of the Government, a workman has to complete 240 days of continuous service for 08-10 years every year. The petitioner did not complete requisite 240 days of work in any year of his employment. He worked intermittently. No artificial breaks were ever given to the petitioner. Moreover, the issue with regard to the fictional breaks has been duly settled by the Hon'ble Administrative Tribunal vide judgment dated 26.2.2004. The termination notice dated 29.11.2004 was given to the petitioner pursuant to the judgment dated 26.2.2004 passed by the Hon'ble Administrative Tribunal. The petitioner worked till January, 2005 as per the availability of the work and the funds. With effect from 04.1.2005, he left/abandoned the job despite the fact that the muster roll for the entire month of January, 2005 was issued in his name. S/Sh. Umesh Handa etc. worked in continuity with him (respondent). Some of the workmen whose names have been disclosed by the petitioner are senior to him. The petitioner is gainfully employed as an agriculturist. No person junior to the petitioner has been retained in service. The petitioner used to work intermittently. He cannot claim parity with the workmen who served continuously. Since the petitioner abandoned the job of his own, he is precluded from claiming any benefit under the Act. No person junior to the petitioner has been engaged/re-engaged. No provision of the Act has been infringed. The petition is merit less. In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been denied that the funds were not available with the respondent because of which the notice of termination was issued. S/Sh. Beli Ram, Chaman Lal, Jarmo and Tilak were also retrenched by the respondent. They have been re-employed. He was not given an opportunity of re-engagement.

5. Per order dated 15.05.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? . . . OPP.
2. Whether the petition is not maintainable in the present form? . . . OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? . . . OPR.
4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS**ISSUES No. 1 and 2**

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Surinder Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that the termination notices were served by the respondent on the other labourers as well. He denied that he did not complete 240 days of work in any year of his employment. He also denied that no fictional breaks were ever given to him by his adversary. He admitted that he had served the respondent/department in the month of January, 2005 as well. He denied that the muster roll for the entire month of January, 2005 was issued in his name by the respondent and he left the job of his own. Further, he denied that the workmen whose names have been divulged by him in para No.3 of the affidavit Ex. PW1/A are senior to him and he makes both the ends meet by doing the work of agriculture.

10. Conversely, Shri D.S. Pathania, Executive Engineer, HPPWD Division Chamba (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that when the petitioner abandoned the job, no notice was served upon him calling upon him to resume the work. He admitted that the persons junior to the petitioner are serving under him.

11. Ex. PW1/B is the copy of the termination notice dated 29.11.2004 served upon Shri Beli Ram by the respondent.

12. Ex. PW1/C is the copy of the termination notice of even date given to the petitioner by the respondent.

13. Ex. RW1/A is the mandays chart relating to the petitioner.

14. Ex. RW1/B is the copy of the muster roll issued by the respondent from 01.1.2005 to 31.1.2005. It depicts that the petitioner served the respondent/department up-to 04.1.2005.

15. Ex. RW1/C is the copy of the order dated 26.2.2004 pronounced by the Hon'ble Administrative Tribunal in O.A. No.234/2003 titled as Surinder Kumar vs. State of H.P. and others.

16. Exts. RW1/D1 to D12 are the copies of the termination notices dated 29.11.2004 served upon S/Sh. Mohinder Kumar and Subhash Kumar etc. by the respondent.

17. Exts. RW1/E1 to E11 are the mandays charts of S/Sh. Umesh Kumar and others.

18. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent as claimed. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

19. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto.

20. The petitioner (PW1) in his cross-examination admitted that he served the respondent/department in the month of January, 2005 also. The said fact finds support from Ex. RW1/B i.e. copy of the muster roll from 0.1.1.2005 to 31.1.2005. Its perusal unfolds that the petitioner served the respondent/department up-to 04.1.2005.

21. Since the petitioner served the respondent/department up-to 04.1.2005, the question of the termination of his services by the respondent w.e.f. the month of December, 2004 (as per the reference) does not arise. As no retrenchment order was passed by the respondent in the month of December, 2004, it cannot be said that the termination order pronounced by the respondent in the said month is illegal and unjustified. It is not the case of the petitioner that the mandays chart Ex. RW1/A produced by the respondent is incorrect. Rather, as already mentioned the petitioner (PW1) in his cross-examination admitted that he had served the respondent in the month of January, 2005 as well.

22. Such being the situation, I have no hesitation to conclude that the claim petition is not maintainable in the present form. The alleged termination of the services of the petitioner by the respondent in the month of December, 2004 is neither illegal nor unjustified.

23. These issues are decided against the petitioner and in favour of the respondent.

ISSUE No. 3

24. Not pressed.

RELIEF (ISSUE NO. 4)

25. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of November, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 31/2011

Date of Institution : 16.4.2011

Date of Decision : 10.12.2012

1. Shri Amar Singh s/o Shri Dharm Chand, r/o Village Khandragi, P.O. Chehni, Tehsil Banjar, Distt. Kullu, H.P. at present Beldar in H.P.P.W.D., Sub Div. Banjar, Distt. Kullu, H.P.
2. Shri Tej Ram s/o Shri Chaine Ram, r/o Village Bini, P.O. Chehni, Tehsil Banjar, Distt. Kullu, H.P. at present Beldar in H.P.P.W.D., Sub Div. Banjar, Distt. Kullu, H.P.

3. Shri Karam Singh s/o Shri Paushu Ram, r/o Village Balla, P.O. Chehni, Tehsil Banjar, Distt. Kullu, H.P. at present Beldar in H.P.P.W.D., Sub Div. Banjar, Distt. Kullu, H.P.
4. Shri Mansa Ram s/o Shri Pattu, r/o Village Dhar, P.O. Chehni, Tehsil Banjar, Distt. Kullu, H.P. at present Beldar in H.P.P.W.D., Sub Div. Banjar, Distt. Kullu, H.P.
5. Sh. Partap Singh s/o Shri Lajje Singh, r/o Village Sharan, P.O. Manglore, Tehsil Banjar, Distt. Kullu, H.P. at present Cleaner in H.P.P.W.D., Sub Div. Banjar, Distt. Kullu, H.P. . . *Petitioners.*

Versus

The Executive Engineer, HPPWD Division No.1, Kullu, H.P.

. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Sh. S.P. Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D. A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether demand notice dated 14.12.2008 raised by Sh. Amar Singh S/o Sh. Dhram Chand & 4 Other workers as per Annexure-A (copy-enclosed) before The Executive Engineer, HPPWD Division No.1, Kullu, Distt. Kullu, H.P. regarding their regularization w.e.f. 2004/2005 instead of 2007 is legal and justified? If yes, to what service benefits and relief the concerned workmen are entitled to from concerned employer as per demand notice dated 14.12.2008?”

2. The case of the petitioners (as set out in the statement of claim/demand) is that they are/were working as beldars/cleaner on daily wage basis in HPPWD Sub Division, Banjar, District Kullu continuously since the year 1994. They have completed at least 240 days of service in each and every calendar year of their engagement. The respondent/department has regularized their services vide orders dated 31.1.2007, 22.1.2007, 27.01.2007 and 9.10.2008 despite the fact that they had completed eight years or more service on 31.3.2004. The Government of Himachal Pradesh pursuant to the decision of the Hon'ble Apex Court in the case titled as Mool Raj Upadhyaya vs. State of H.P., 1994 SCALE (2) 630, has decided and regularized the services of its daily waged workers working in various departments on completion of 10 years of service. Presently the Himachal Pradesh Government has directed all its departments to regularize the services of the daily wagers on completion of eight years of service as a welfare measure on the demand of the workers. They (petitioners) had already completed more than 10 years of service before the dates of their regularization. Their services are/were required to be regularized on completion of 10 years of service as per the observations made in Mool Raj Upadhyaya's case in the years 2004-2005 instead of the years 2007-2008. They are entitled to the regularization and work charge status including arrears of wages as per the decision of the Himachal Pradesh Government after completion of eight years of service and if the same is not possible, after the completion of 10 years of daily wage service.

As such, as is apparent from the prayer clause of the statement of claim/petition, the petitioners have claimed the following relief(s):-

“the respondent be directed to regularize the services of the applicants and to give them work charge status including arrears of wages w.e.f. 2004/2005 as per decision of H.P. Govt./Hon’ble Supreme Court of India. And/or any other relief to which the applicants are found entitled to under the facts and circumstances of case, may also be awarded and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioners has been infringed. The petitioners/claimants have no cause of action. No dispute under the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) exists between the parties. The petitioners being the regular Class-III and Class-IV government servants from the year 2007 are governed by the statutory rules framed under the constitution. The present industrial dispute was raised in the year 2008 after the petitioners joined as regular public servants. The dispute is purely service matter under the statutory service rules. This Court has no jurisdiction to entertain and decide the petition. The claim petition is bad on account of delay and laches on the part of the petitioners.

On merits, paras 2 to 7 of the reply read thus:-

“2. That in reply to Para -2 of the claim petition it is submitted that the engagement of the claimant as daily waged Cleaner in the case of Sh. Pratap Singh S/O Sh. Laje Ram and daily waged Beldars in case of other claimants, in the office of respondent is not disputed. However, the detailed Mandays for each of the claimants including their date of engagement and regularization are being placed as Annexure R-1.

3. That contents of Para-III of the claim petition are admitted to the extent of regularization of the claimants. However they have been regularized as per the prevailing policy of the State of H.P. for the regularization of its daily waged worker engaged/deployed in different department, as admissible in the case of claimants. The date of regularization in case of each of claimants is mentioned in Annexure-R-1 discussed above.

4. to 6. That in reply Para No.4, 5 and 6 of the claim petition, it is submitted that the Law laid down by the Hon’ble Supreme Court in a case titled as Mool Raj Upadhyay V/S State of H.P. and the policy for regularization of daily wage framed there under is not disputed. However the above Law as well as policy/scheme was only applicable to the employees, who had either completed 10 years continuous services as on 31.12.1993 or the employees who had rendered one or more year of service, but not completed 10 year of service as on 31.12.1993. This scheme also does not apply to those employees who had not completed even one year of service as on 31.12.1993. Thus in the case of claimants the Policy framed under Mool Raj Upadhyay as contended by the claimants in their claim petition is not at all applicable as their, date of engagement is lateral to 31.12.1993. The Policy framed under the Mool Raj Upadhyay was one time benefit given to the workman who had completed 10 year of service as on 31.12.1993. The above position has duly been clarified by Hon’ble H.P. High court in C.W.P. No. 718 of 2006 Gauri Dutt and others V/S State of H.P. The case of claimants are governed with the subsequent policy/scheme framed in the year 2006 vide department of Personnel letter No. PER(AP)-C-B(2)-1/2006-Vol.II dated 9.6.2006. The date eligibility of continues service in the Policy framed in year 2006 was 31.3.2004. The Policy framed in 2006 provides with other conditionthe eight year of continuous service to be only an eligibility criteria the regularization shall be only from prospective

effect that is after the date of order of regularization is issued after completion of codal formalities. Further the daily waged workers were to be regularized against vacant post or by creation of the post. Thus in the case of claimants except, Sh. Pratap Singh Cleaner vide letter No.PWE-133-11/2006-ES-III/12909-30 Dated 4.12.2006, copy of which is being attached as annexure R-2 attached. The post for regularization as per prevailing policy of 2006 were created by State Govt. As such the claimants were regularized by the respondent office in the year 2007 after completion of codal formalities. In the case of Sh. Pratap Singh Cleaner the post was created by the State Govt. vide order No. PWE-133/2006-ES-III-6386-6408 Dated 10.8.2006 copy of which is being attached as Annexure R-3, the copies of the orders of the regularization are being placed as Annexure-R 4 to R-8. The copy of policy dated 9.6.2006 is being placed annexure R-9. Therefore keeping in view the above submissions the claimant had rightly been regularized as per the prevailing policy as applicable in their cases. The claimants being regular government servant are governed under service rules are also precluded from raising present dispute under The Industrial dispute act. The Hon'ble court has not jurisdiction to entertain and try the present dispute, which has been raised at a time when the claimant had stepped into the shoes of Public servants. The copy of demand notice dated 30.11.2008 is being annexed as Annexure R-10.

7. That the contents of this para are wrong and hence denied. A detailed reply has already been given in reply to para 4, 5 and 6 above. The claimants had rightly been regularized at the appropriate time as per the policy as applicable to their respective cases. Thus the claimants has no enforceable cause action against the replying respondent. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioners have reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 01.5.2012, following issues were struck:-

1. Whether the petitioner and others are entitled to the regularization of their services w.e.f. the year 2004/2005 instead of January, 2007 as alleged? . . . OPP.

2. Whether the petitioner(s) have a cause of action? . . . OPP.

3. Whether the ptition is not maintainable in the present form? . . . OPR.

4. Whether this Court has no jurisdiction to hear and decide the matter? . . . OPR.

5. Whether the petition is bad on account of delay and laches as alleged. If so, its effect? . . . OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS**ISSUES No.1 and 2**

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Amar Singh (one of the petitioners) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that they are not entitled to the regularization (as claimed) as per the policy of the Government. He also denied that the services of no person junior to them have been regularized by the respondent/department and a phoney petition has been preferred.

10. Conversely, Shri Anil Sharma, Executive Engineer, HPPWD, Division No.1, Kullu (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him. In the cross-examination, he denied that the services of the petitioners have not been regularized as per the policy of the Government on the due date(s).

11. Ex. RW1/A to E are the copies of the office orders issued by the respondent relating to the regularization of the petitioners on different dates.

12. Ex. RW1/F is the copy of the letter dated 9th June, 2006 written by the Secretary (Personnel) to the Government of Himachal Pradesh to the various officers and heads of departments regarding the regularization of the daily waged/contingent paid workers.

13. Ex. RW1/G is the copy of the demand notice dated 14.12.2008 served upon the respondent by the petitioners under Section 2-A of the Act.

14. Ex. RW1/H is the copy of the letter dated 04.12.2006 written by the Engineer-in-Chief, HPPWD, Shimla to all the Superintending Engineers regarding the regularization of daily wagers.

15. Ex. RW1/I is the mandays chart pertaining to the petitioners.

16. Relying upon Mool Raj Upadhyaya vs. State of Himachal Pradesh (cited supra) and State of Himachal Pradesh and others vs. Gehar Singh, 2007, 113 FLR 434 (SC), the ld. counsel for the petitioners argued that the services of his clients are required to be regularized on completion of 8-10 years of service in the years 2004-2005 and not in the years 2007-2008 as has been done by the respondent.

On the other hand, ld. Dy. D.A. for the respondent urged that since the petitioners did not fulfill the criteria of regularization as laid down in the above quoted rulings, their services have been rightly regularized as per the policy of the Government (Ex. RW1/E) as and when the post(s) fell vacant.

17. To my mind, the contention of the ld. Dy. D.A. holds the force and is sustainable. Mool Raj Upadhyaya's case and Gehar Singh's case deal with those daily wagers who were in employment on December 31, 1993. Admittedly, the petitioners/claimants joined the respondent/department thereafter. Therefore, the catena of law laid down in these rulings in no way helps the petitioners.

18. The evidence available on the record makes it crystal clear that the services of the petitioners were regularized as per the prevailing policy of the Government. They joined without any protest. That being so, I am at a loss to understand as to how and on what basis the petitioners are canvassing that their services have not been regularized on due date(s) by the respondent. The petitioners have not divulged the name of any person junior to them whose services have been regularized by the respondent earlier to them. They (petitioners) have no cause of action and are not entitled to any relief.

19. These issues are decided against the petitioners and in favour of the respondent.

ISSUE No. 3

20. Taking into account my findings on the issues No.1 and 2 above, it is held that the instant claim petition is not maintainable in the present form.

21. This issue is also decided against the petitioners and in favour of the respondent.

ISSUES NO. 4 & 5

22. Not pressed.

RELIEF (ISSUE NO.)

23. As a sequel to my findings on the various issues, the present claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 170/2005

Date of Institution : 08.9.2005

Date of Decision : 01.12.2012

Shri Ashok Kumar s/o Shri Jaisi Ram, r/o VPO Sulyali, Tehsil Nurpur, District Kangra,
H.P. *Petitioner.*

Versus

The Executive Engineer, H.P. PWD Division Nurpur, District Kangra, H.P. . . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Babu Ram Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D. A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Ashok Kumar s/o Shri Jaisi Ram workman by the Executive Engineer, H.P. PWD Division Nurpur, District Kangra, H.P. w.e.f. Jan., 1989 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged by the respondent in H.P. PWD Sub Division, Nurpur during the year 1987. He worked on various roads and national highway. For one month, he served as a Storekeeper. Various other works as directed by his superiors were performed by him. During the period of his engagement no complaint was received against him regarding his work and conduct. In the month of November, 1989 his services have been terminated by the respondent wrongly and illegally. He had completed 240 days of work in each and every calendar year of his engagement prior to the date/month of his termination.

At the time of his retrenchment, the persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. Before the termination of his services neither any notice was served upon him nor the retrenchment compensation was paid. The respondent adopted the policy of pick and choose in contravention of the law. After his retrenchment, he continuously visited the office of the respondent for re-engagement, but in vain. From the date of his termination, he is unemployed. One Smt. Kusum Lata w/o Shri Roshan Lal was junior to him. She has been re-engaged by the respondent. He was not given an opportunity of re-employment. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). He is on the verge of starvation. The work is available with the respondent.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“the termination of the applicant by the respondents may kindly be declared null and void and he may be granted all consequential benefits as also the other allowances, salary besides being other benefits and regularization after 10 years of service with seniority and back wages along with interest @ 18% per annum available under law, and other relief(s) to which applicant may be found entitled to, in the peculiar circumstances of the case and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the

effect that the present claim petition has been preferred after about 15 years from the date of the alleged retrenchment. The same is thus hit by the vice of delay and laches.

On merits, it has been owned that the petitioner is a resident of Village Sulyali, Tehsil Nurpur. The fact that the services of the petitioner were engaged as a daily wager in the year 1987 has not been disputed. It has been denied that the petitioner was removed from service in the month of November, 1989. Actually, the petitioner left the job of his own. Few persons were engaged by the department in Nurpur Division during the relevant years. The existing labour is sufficient for carrying out the maintenance work on the roads. The petitioner is gainfully employed after he abandoned the job. He never visited his (respondent's) office for re-employment. The claim petition is delayed and time barred. No person junior to the petitioner has been retained in service or re-engaged. Smt. Kusum Lata was appointed as a Storekeeper after about 10 years from the date of the alleged termination of the petitioner. She has been engaged in a different category. No provision of the Act has been infringed. Since the petitioner voluntarily left the service, he is not entitled to any protection under the Act. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that Smt. Kusum Lata was engaged on daily wage basis as no post of clerk was vacant in the Division when she was employed. Many labourers who had completed eight years of service up-to 31.3.2000 were granted workcharge status. He never abandoned the job.

5. Per order dated 17.11.2006, following issues were struck by one of my Id. Predecessors:

1. Whether the disengagement from the service of the claimant by the respondent is in accordance with law? . . . OPP.
2. If the above issue is in affirmative to what relief of service benefits the petitioner is entitled to? . . . OPP.
3. Whether the claim petition is barred by delay and laches? . . . OPR.
4. Whether the claimant willfully abandoned his job? . . . OPR.
5. Relief.

6. At this stage I will like to highlight that after the issues were struck, a number of opportunities were afforded to the petitioner to lead the evidence. Costs were also imposed upon him from time to time, which were never paid. The claim petition was ultimately dismissed in default on 14.12.2007. After the dismissal of the claim petition, a restoration application under Order 9 Rule 9 read with Section 151 CPC was moved by the applicant/petitioner on 16.8.2011. Such application was allowed by this Court vide order dated 03.9.2012 subject to the payment of the costs. The costs have now been paid by the petitioner to his adversary.

7. I have heard the Id. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 2 : As detailed in the operative part of the Award.

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1, 2 and 4

9. Being interlinked and to avoid the repetition, all these issues are taken up together for discussion and disposal.

10. The petitioner Shri Ashok Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also stated that in the years 2002-2003 new/fresh workmen have been engaged by the respondent. Their names are S/Sh. Tek Chand and Mangal Singh etc.

In the cross-examination, he stated that he had joined as a daily waged beldar in the month of January, 1987. He denied that he worked only up-to the month of November, 1988. He admitted that the present industrial dispute was raised by him in the years 2002-2003. He also admitted that Smt. Kusum Lata was appointed as a Storekeeper. He does the job privately nowadays. He denied that he is not entitled to the re-employment etc.

11. Conversely, Shri Inder Singh, Executive Engineer, H.P. PWD, Nurpur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that no notice was given to the petitioner asking him to resume his work. Even no departmental proceedings were initiated against the petitioner for his absence from duty. He denied that the persons junior to the petitioner are serving under him (RW1) and have been regularized. He also denied that the services of the petitioner have been terminated in a wrongful manner.

12. Ex. RW1/A is the mandays chart relating to the petitioner.

13. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar in the month of January, 1987 and he served as such intermittently up-to the month of November, 1988. The said fact also finds support from the mandays chart Ex. RW1/A.

14. The version of the petitioner is that in the month of January, 1989, his services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner had abandoned the job on his own accord and free volition in the month of November, 1988.

15. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

16. The mandays chart Ex. RW1/A unfolds that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination i.e. January, 1989 as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

17. The respondent has placed on the record the seniority list of the daily waged beldars. It clarifies that from the year 2000 to March, 2012 as many as 52 new/fresh hands were engaged by the respondent. There is nothing on the record to show that at the time of engaging the new/fresh hands an opportunity of reemployment was afforded to the petitioner. That being so, it can be safely said that the respondent has flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his termination.

18. The retrenchment under challenge pertains to the month of January, 1989. The petitioner (PW1) in his cross-examination admitted that the present industrial dispute was raked up by him in the year 2002-2003 i.e. after the lapse of 13-14 years. As already mentioned, the petitioner did not pursue the lis diligently and failed to lead the evidence despite the grant of several opportunities. The claim petition/reference was dismissed in default. The restoration application was filed after 3½ years.

19. While testifying in the Court as PW1, the petitioner has stated that he works privately and earns the livelihood. He has given his age as 42 years. It is common knowledge that a young man like the petitioner will not sit at home during the period, he is/was out of the service. For these reasons, he is not entitled to the back wages and seniority etc.

20. These issues are accordingly decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

23. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

24. As a sequel to my findings on the various issues above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner ordered in the month of January, 1989 is set aside and quashed. The respondent is directed to reinstate the

petitioner forthwith. However, it is made clear that the petitioner shall not be entitled to any seniority, continuity in service and payment of the back wages etc. from January, 1989 till his re-engagement taking into account his act and conduct as well as the acute delay on his part. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 264/2010

Date of Institution : 18.11.2010

Date of Decision : 11.12.2012

Shri Bahadur Singh s/o Shri Narain Singh, r/o Village Kot, P.O. Bagachanogi, Tehsil
Thunag, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPSEB Division Gohar, Distt. Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Bimal Sharma, Adv.

For the Respondent : Sh. Abhishek Lakhanpal, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of services of Shri Bahadur Singh S/O Sh. Narain Singh, daily wage workman by The Executive Engineer, HPSEB Division Gohar, Distt. Mandi, H.P. w.e.f. 16.3.2000 without serving notice and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar by the respondent on 1st December, 1989. He served the respondent/Board up-to 16.3.2000. On the said date his services were terminated by the respondent by a verbal order. Neither any notice was given to him nor the retrenchment compensation was paid. At the time of his retrenchment, the persons junior to him were retained in service by the respondent. Their names are S/Sh. Yashodhan, Dina Nath and Duni Chand. Not only this, after his disengagement new/fresh hands have been employed by the respondent. Their names are S/Sh. Krishan Chand and Lal Singh etc. He was not given an opportunity of re-employment. He (petitioner) has come to know that the respondent/Board has installed a 33 KV Sub Station in Gohar Division. Persons have been appointed by ignoring his seniority. The work is available with the respondent. His services have been dispensed with so as to defeat his right of regularization as per the policy of the Government. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) as well as the HPSEB Industrial Establishment Standing Orders adopted by the respondent/Board.

As such, he (petitioner) prays that his termination be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is hit by the vice of delay and laches. The petition is not maintainable since no legal or vested right of the petitioner has been infringed.

On merits, it has been denied that the services of the petitioner were engaged as a daily waged beldar on 01.12.1989. However, it has been pleaded that the petitioner was initially engaged as a beldar on daily wage basis w.e.f. 01.3.1990. He worked as such up-to 25.2.1997. The petitioner used to attend to his duties in a very casual manner and generally remained absent. He was not on the rolls during the years 1993, 1996, 1998 and 1999. After 25.2.1997, the petitioner did not work up-to 23.2.2000. On 16.2.2000, when work of restoration of electric supply was required to be done, the petitioner was called for work per letter of even date (annexure RA-1). It was made clear that the work is for short duration and on the completion of the specific work, the engagement of the petitioner will automatically come to an end. Thus, no notice was required to be served upon the petitioner before his disengagement. The petitioner never remained in continuous employment of the Board. His status is/was that of a casual worker only. The petitioner did not complete 240 days of work in any calendar year of his engagement. Daily wage services of the petitioner have not been terminated as alleged. No person junior to the petitioner has been retained in service. During the relevant period, in order to meet the exigency of work, 16 workmen who were already working in Electrical Sub Division HPSEB, Padhar under Electrical Division HPSEB, Joginder Nagar were temporarily deployed to accomplish the time bound work. These 16 beldars have since reverted to their original place of posting i.e. Sub Division HPSEB, Padhar. After the disengagement of the petitioner no new/fresh hands have been engaged. No person junior to the petitioner continued in service. The petitioner was habitual of leaving the work voluntarily. S/Sh. Yashodhan, Dina Nath and Duni Chand were re-engaged as beldars as per the orders passed by the Hon'ble Himachal Pradesh State Administrative Tribunal, Bench at Mandi. Now, their daily waged services have been regularized as per the approval conveyed by the Board. The petitioner cannot claim any preference over the 16 beldars, who were called from Sub Division, Padhar for performing the time bound work. The execution work of 33 KV Sub Station at Thunag has been carried through the regular staff as well as on contract basis. No daily wager was deployed for the said work. Permanent work is not available with him (respondent) for re-engagement of the services of the petitioner. Since the petitioner habitually absented from duty, the question of defeating his right of seniority and

regularization does not arise. The Government of Himachal Pradesh has imposed a complete ban on the deployment of the daily wagers or the part timers. As and when the ban is lifted and the work is available, the services of the petitioner will be re-engaged on the basis of his seniority in the Division. No provision of the Act or the Standing Orders has been violated. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that the State Government had refused to make the reference on the ground of delay. Thereafter, he (petitioner) preferred a Writ Petition before the Hon'ble High Court of Himachal Pradesh. The reference has been sent by the appropriate Govt. in obedience to the orders passed by the Hon'ble High Court. There is/was no delay on his part. He never absented from duty. Breaks were given to him by the respondent in order to ensure that he does not complete requisite service for regularization. He never abandoned the job.

5. Per order dated 07.9.2011, following issues were struck by my Id. Predecessors:

1. Whether the disengagement of the petitioner w.e.f. 16.3.2000 is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? OPP

2. Whether the reference is not maintainable as alleged. If so, to what effect?
.. OPR.

3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?
.. OPR.

4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Partly Yes, Partly No

Issue No. 2 : Not pressed.

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

8. Shri Bahadur Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had joined the service on 01.3.1990 and worked up-to 25.2.1997 only. He also denied that his services were engaged per letter dated 16.2.2000 for a specific work and particular period. He denied that he served only up-to 23.2.2k and did not complete 240 days of work in any year of his employment. Further, he denied that he used to leave the work of his own and has given a phoney statement.

9. Conversely, Shri B.R. Thakur, Assistant Engineer, HPSEB, Electrical Division, Gohar testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by the respondent.

In the cross-examination, he admitted that the persons junior to the petitioner are serving under the respondent. He also admitted that at the time of engaging new/fresh hands, no notice of re-employment was given to the petitioner. No notice was served upon the petitioner regarding his willful absence from duty.

10. Ex. PW1/B is the provisional seniority list of daily waged beldars as it stood on 01.4.2012 in respect of the office of the respondent.

11. Ex. PW1/C is the provisional seniority list of daily waged beldars relating to the respondent as on 31.10.2001.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. No reference has been received from the appropriate Government regarding providing the fictional breaks, if any, to the petitioner by the respondent. Therefore, the said controversy between the parties cannot be looked into by this Court being beyond the terms of the reference.

14. The version of the petitioner is that his services were initially engaged by the respondent as a daily rated beldar on 01.12.1989. While denying the said fact, the respondent has pleaded that the petitioner was appointed on 01.3.1990 instead of 01.12.1989. The mandays chart Ex. RW1/B reveals that the petitioner served the respondent/Board intermittently from 01.3.1990 to 15.3.2000. It is not the case of the petitioner that the mandays chart produced by the respondent is incorrect.

15. The petitioner has asserted that on 16.3.2000, his services were wrongly and illegally terminated by the respondent. On the other hand, the respondent has maintained that the petitioner habitually absented from the work and did not report for duty regularly.

16. The respondent has not exhibited on the file any document evidencing that the services of the petitioner were engaged for a specific period and work. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty from time to time. The plea of abandonment put forth by the respondent is not established.

17. The mandays chart Ex. RW1/B clarifies that the petitioner did not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination i.e. 16.3.2000 as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

18. From the admissions made by Shri B.R. Thakur (RW1) as well as the provisional seniority lists Exts. PW1/B and C, it can be gathered that the persons junior to the petitioner are serving the respondent/Board. Not only this, after the disengagement of the petitioner, new/fresh hands were engaged by the respondent. At the time of engaging new/fresh hands an opportunity of re-employment was not afforded to the petitioner. That being so, it can be safely said that the respondent has flouted the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

19. This issue is decided accordingly.

ISSUE NO. 2

20. Not pressed.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter. 23. While testifying in the Court as PW1, the petitioner has given his age as 42-43 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he was not gainfully employed. For these reasons, he is not entitled to the back wages.

24. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

25. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 16.3.2000 except back wages. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 274/2010

Date of Institution : 30.12.2010

Date of Decision : 10.12.2012

Shri Bhup Singh s/o Shri Dila Ram, r/o Village Balahana (Shawal), P.O. Batwara, Tehsil
Sunder Nagar, District Mandi, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Forest Division, Sunder Nagar, District Mandi, H.P.
. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B. S. Sankhayan, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of the services of Shri Bhup Singh S/O Shri Dila Ram daily wages workman by the Divisional Forest Officer, Forest Division, Sunder Nagar, District Mandi, H.P. w.e.f. February, 2006 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, whereas junior to him have been retained by the employer, as alleged by workman, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the month of March, 2002 in Forest Range, Kangoo, Tehsil Sunder Nagar. He served as such up-to 31.3.2003 and completed 240 days of continuous service in a calendar year. On the said date i.e. 31.3.2003 his services were terminated by the Range Forest Officer, Kangoo by a verbal order without assigning any reason. He was also not given an opportunity of being heard. On 12.2.2008, he (petitioner) was re-engaged by the respondent as a beldar in Kangoo Range. He worked up-to 01.5.2008 and on that day his services were once again terminated by the Range Forest Officer, Kangoo by an oral order. Neither any reason was given for his retrenchment nor an opportunity of being heard was afforded to him. He (petitioner) was never called by the respondent to work thereafter. The persons junior to him namely S/Sh. Daulat Ram and Jagdish Ram etc. are still working with the respondent/department. The work is available with the respondent. He is not being reinstated by the respondent with a malafide intention and to engage own men. S/Sh. Jeet Ram, Desh Raj, Ram Dayal and Parkash Chand etc. were employed alongwith him (petitioner). Their services have not been terminated by the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is evident from the prayer clause of the statement of claim/petition, the petitioner has claimed the following relief(s):-

“the act of respondents whereby the service of petitioner has been terminated be declared null and void and petitioner may kindly be reinstated and allowed to join in previous place of posting and he be granted all the consequential benefit and ancillary relief to petitioner w.e.f. March, 2002 from the date of illegal termination, as such petitioner please be allowed to join his previous place of posting after calling for the relevant record of concerned department, and petition may please be allowed and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. On merits, it has been denied that the services of the petitioner were engaged as a daily waged beldar in the month of March, 2002. The petitioner was appointed as a casual labourer to carry out the seasonal forestry works in Kangoo Forest Range during the month of April, 2002. He worked intermittently up-to the month of February, 2006 and did not complete 240 days of work in any calendar year of his engagement. It has been denied that the services of the petitioner were retrenched per oral orders dated 31.3.2003 and 01.5.2008. He worked in the months of August, October and November, 2003 as well as January and February, 2006. After February, 2006, the petitioner never reported for duty. He abandoned the job of his own. The mandays chart of the petitioner is annexure R-1. He (petitioner) worked in various seasonal forestry works intermittently for a few days in a particular year. He left the job voluntarily. Forestry works are seasonal subject to the availability of the funds. As and when the petitioner approached him (respondent), his daily waged services were utilized. No person junior to the petitioner is serving under him (respondent). The services of the petitioner were never re-engaged in the year 2008 as claimed. The reference in question pertains to the year 2006. The petitioner is precluded from claiming parity with the workmen who served continuously. Demand notice dated 27.4.2009 was served by the petitioner. He is gainfully employed as an agriculturist. Since the petitioner abandoned the job, he is not entitled to any protection under the Act. No provision of the Act has been flouted. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the mandays chart was issued in his favour by the respondent under the Right to Information Act, 2005. The said chart and the mandays chart produced by the respondent are contradictory. His services were never engaged for seasonal forestry works. He did not abandon the job.

5. Per order dated 04.11.2011, following issues were struck by my Id. Predecessor:-

- (i) Whether the disengagement of the petitioner w.e.f. May, 2001 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Act as alleged. If so, to what relief the petitioner is entitled to? . . .OPP.
- (ii) Whether the reference is not maintainable as alleged. If so, to what effect? . . .OPR.
- (iii) Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? . . .OPR.
- (iv) Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1	:	No
Issue No. 2	:	Yes
Issue No. 3	:	Not pressed
Relief.	:	Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Bhup Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that he did not serve the respondent in the year 2008 and worked only up-to the month of February, 2006. He also denied that the instant industrial dispute has been raised by him with regard to his retrenchment in the month of February, 2006. Further, he denied that in the forest department the work is seasonal and the workmen, whose names have been disclosed by him, worked in seasonal forestry works. He refuted that he did not complete 240 days of work in any calendar year of his employment. He denied that he left the job voluntarily because of which he is not entitled to the reemployment etc.

10. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by him. In the cross-examination, he admitted that before the termination of the services of the petitioner, neither any notice was given to him nor an inquiry was conducted. He does not know that after the disengagement of the services of the petitioner, S/Sh. Lachhi Ram etc. were employed. He denied that the petitioner was removed from service in a wrongful manner.

11. Ex. PW1/B is the mandays chart produced by the petitioner showing his working days.

12. Ex. R1 is the copy of the demand notice dated 27.4.2009 served upon the respondent by the petitioner.

13. Ex. RW1/B is the mandays chart relating to the petitioner produced by the respondent.

14. Exts. RW1/C and D are the mandays charts qua the daily waged workers namely S/Sh. Jit Ram and Lachhi Ram etc.

15. Section 10 (4) of the Act postulates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto.

16. As per the reference this Court is required to decide as to whether the termination of the services of the petitioner ordered by the respondent w.e.f. the month of February, 2006 is legal and justified or not?

17. Bare perusal of the statement of claim/demand and the rejoinder filed by the petitioner go to show that the termination order allegedly passed by the respondent in the month of

February, 2006 has not been challenged by him on any count. Therefore, it cannot be said that the retrenchment of the services of the petitioner which allegedly took place in the month of February, 2006 is illegal and unjustified.

18. True it is that the mandays charts Exts. PW1/B and RW1/B produced by the parties are different. There is no cogent and convincing evidence on the record to show that the mandays chart Ex. RW1/B exhibited by the respondent is incorrect. Otherwise also, Ex. PW1/B produced by the petitioner no where shows that his services were re-engaged by the respondent on 12.2.2008 as claimed by him (petitioner).

19. The assertion of the respondent that the services of the petitioner and others used to be engaged for seasonal forestry works does not appear to be true as from the mandays chart Ex. RW1/C, it can be gathered that some of the daily wagers namely S/Sh. Jeet Ram and Jai Prakash etc. worked for more than 240 days in a particular year. A person having worked for more than 240 days in a year cannot be termed as a seasonal worker by any stretch of imagination.

20. The contention of the respondent that the petitioner left the job of his own accord and free volition in the month of February, 2006 pales into insignificance since the termination in question (as per the reference) has not been impugned on any ground by the petitioner/workman.

21. Such being the situation, I have no hesitation to conclude that the claim petition is not maintainable in the present form. The disengagement of the services of the petitioner by the respondent in the month of February, 2006 is legal and valid. As the petitioner is not clear about his case he is not entitled to any relief.

22. These issues are decided against the petitioner and in favour of the respondent.

ISSUE No. 3

23. Not pressed.

RELIEF (ISSUE NO. 4)

24. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 124/2008

Date of Institution : 15.5.2008

Date of Decision : 01.12.2012

Shri Bir Bahadur s/o Shri Lal Bahadur C/O CITU Office, Prem Niwas, Upper Julakri,
Chamba, District Chamba, H.P.Petitioner.

Versus

1. The Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P.
2. Shri Ashok Chouhan, Sub Contractor C/O Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. (name deleted as per order dated 15.5.2012).

....Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. D.P. Malhotra, Adv.
For the Respondent No.1 : Already exparte

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the action of the (1) The Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. (2) Shri Ashok Chouhan, Sub Contractor C/O Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. not to re-engage Shri Bir Bahadur S/O Shri Lal Bahadur workman after 01-09-2006 when the company re-started the work after strike/stoppage of work, whereas fresh workers/his juniors have been engaged by the company without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what relief of service benefits, back wages and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was working as a Helper with the Hindustan Construction Company Limited (respondent No.1) under the respondent No.2 Shri Ashok Chouhan (Sub Contractor) on daily wage basis. On 12.6.2006, his services were terminated by the respondents on the pretext that the work has been stopped and he (petitioner) will be re-engaged on the resumption of the work. The respondents have re-started the work. New/fresh hands have been engaged by the respondents. He was not given an opportunity of re-employment despite the fact that he is/was willing to work. His services have been disengaged by the respondents by a verbal order. Neither any notice was given to him nor any reason was assigned for his retrenchment. The retrenchment compensation was also not paid to him by the respondents. From the date of his termination, he is unemployed. The act and conduct of the respondents is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the respondents be directed to reinstate him in service with all consequential benefits including the back wages and compensation etc.

3. On notice, the respondent No.1 appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that no legally subsisting relationship of the employer and the workman exists between him (answering respondent) and the petitioner. He (petitioner) is estopped from filing the petition by his act and conduct. The claim petition is gross misuse and abuse of the process of law. The petitioner is guilty of willfully abandoning the work and leaving the work site without any intimation or address.

On merits, it has not been disputed that the services of the petitioner were engaged as a helper by the Company (respondent No.1) under the Sub Contractor (respondent No.2) on daily wage basis. However, it has been denied that the services of the petitioner were terminated without adopting the due process of law. Actually, the petitioner left the job of his own without any reason or notice. No assurance was ever given to the petitioner that his services will be re-engaged. The petitioner has distorted the facts. The averments made in the claim petition are false to his knowledge. The petitioner cannot be allowed to take advantage of his wrongs. On account of the gross indiscipline on the part of the petitioner, the work of the project cannot be allowed to come to stand still. Infact, the petitioner never had any intention to work. He is trying to hold him (respondent No.1) to ransom. No new/fresh hands have been engaged. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the contesting respondent No.1 prays that the petition in hand be dismissed with costs.

4. The respondent No.2 could not be served for long as the petitioner failed to furnish his complete and correct address as well as comply with the various orders passed by the Court from time to time. On 09.4.2012 the petitioner was saddled with Rs.500/- as costs for non-compliance of the Court orders. Such costs were never paid. On 15.5.2012 the ld. counsel for the petitioner made a statement at bar that he does not want to proceed with the reference/claim petition against the respondent No.2 and his name be deleted from the array of the respondents. Accordingly, the name of the respondent No.2 was ordered to be deleted from the array of the parties on that day.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the replying respondent No.1. It has been pleaded that the respondent No.1 being the principal employer is liable to re-engage him (petitioner). He did not abandon the job.

6. Vide order dated 20.7.2012, following issues were struck:

1. Whether the action of the respondents not to re-engage the petitioner after 01-09-2006 is illegal and unjustified?
..OPP
2. Whether no relationship of employer and employee/workman exists between the petitioner and the respondent No.1 as alleged. If so, its effect?
..OPR
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect?
..OPR
4. Relief.

7. I have heard the ld. counsel/AR for the petitioner and have gone through the case file.

8. At this stage, I will like to highlight that since the respondent No.1 absented from the Court on 10.10.2012, he was ordered to be heard exparte.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes
 Issue No. 2 : No
 Issue No. 3 : Not pressed
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2

10. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

11. The petitioner Shri Bir Bahadur stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

12. No evidence has been adduced by the respondent No.1.

13. The deposition made by the petitioner (PW1) goes un-rebutted and unchallenged on the record. The act of the respondent No.1 not to re-engage the petitioner (workman) after 01.9.2006 when the Company restarted the work amounts to retrenchment. The testimony of PW1 goes to show that the respondents have flouted the provisions of Sections 25-F, 25-G and 25-H of the Act.

14. As already mentioned no evidence has been led by the respondent No. 1. The plea of abandonment put forth by him is not established.

15. On 03.6.2010 below given order was passed by my Id. Predecessor:-

“3.6.2010 Present: Sh. Gaurav Sharma, adv. for the petitioner
 Sh. Vijay Pandit, adv. for the respondent 1
 None for the respondent 2

On the last date the petitioner was directed to be present. He is present in person today. The petitioner has in unequivocal terms expressed his inability to work with the respondent Hindustan Construction Company Ltd. In fact 143 references had been received from the appropriate Government in respect to the termination of workmen by the Hindustan Construction Company Ltd. The aforesaid references are pending for adjudication since 15.5.2008. It transpires from the record that the address of all the workmen in the references is Prem Niwas, Upper Julakari, Chamba, District Chamba, H.P. Even the respondent no.2 was not being served during the said interregnum. Dasti summons were issued to the petitioners, but the Id. counsel could not get the same served as none was forthcoming in pursuance to his communications addressed to the petitioners. On 30.4.2010 again dasti summons were supplied to the Id. counsel for the petitioner and even the petitioners were directed to remain present today. As sequel thereto only six workmen have put in appearance before this Court today one being the present petitioner. All the six have refused to join the respondent company. They claim that certain dues are payable to them by the respondent Company.

The reference is limited to the question of termination alone and obviously consequential benefits accruing thereto. The statement of claim on record is only confined to the violation of the

provisions of Section 25-F of the Act and as such the dues payable will also be as envisaged by the said provisions of law. Since the petitioners have expressed their unwillingness to join the company, the respondent is directed to produce entire details vis-à-vis their appointment and remuneration being paid by them till their termination/abandonment. List the matter on 5.8.2010 at Chamba.

Sd/-
K.R. CHIRAG BHANU SINGH,
Presiding Judge
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.”

16. In view of the above quoted order passed by the Court, I am at a loss to understand as to how it lies in the mouth of the respondent No. 1 to say that no relationship of employer and employee exists between him and his adversary.

17. Such being the situation, I have no hesitation to conclude that the action of the respondent No. 1 not to re-engage the petitioner after 01.9.2006 is illegal and unjustified.

18. While testifying in the Court as PW1, the petitioner has given his age as 35 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he was not gainfully employed. Otherwise also, the order dated 03.6.2010 reveals that the petitioner had expressed his inability to work with the respondent/Company. For these reasons, he is not entitled to the back wages and seniority etc.

19. These issues are decided in favour of the petitioner and against the respondent No.1.

ISSUE NO. 3

20. Not pressed.

RELIEF (ISSUE NO. 4)

21. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent No.1 is directed to reengage the petitioner forthwith. He shall not be entitled to the seniority, continuity in service and back wages. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 81/2008

Date of Institution : 15.5.2008

Date of Decision : 01.12.2012

Shri Chander Bahadur Shresth s/o Shri Padam Lal Shresth C/O CITU Office, Prem Niwas,
Upper Julakri, Chamba, District Chamba, H.P. . . *Petitioner.*

Versus

1. The Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P.
2. Shri Karan Salaria, Sub Contractor C/O Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. (name deleted as per order dated 15.5.2012) . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. D.P. Malhotra, Adv.

For the Respondent No.1 : Already exparte

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the action of the (1) The Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. (2) Shri Karan Salaria, Sub Contractor C/O Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. not to re-engage Shri Chander Bahadur Shresth S/O Shri Padam Lal Shresth workman after 01-09-2006 when the company re-started the work after strike/stoppage of work, whereas fresh workers/his juniors have been engaged by the company without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what relief of service benefits, back wages and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was working as a Helper with the Hindustan Construction Company Limited (respondent No. 1) under the respondent No.2 Shri Karan Salaria (Sub Contractor) on daily wage basis. On 12.6.2006, his services were terminated by the respondents on the pretext that the work has been stopped and he (petitioner) will be re-engaged on the resumption of the work. The respondents have re-started the work. New/fresh hands have been engaged by the respondents. He was not given an opportunity of re-employment despite the fact that he is/was willing to work. His services have been disengaged by the respondents by a verbal order. Neither any notice was given to him nor any reason was assigned for his retrenchment. The retrenchment compensation was also not paid to him by the respondents. From the date of his termination, he is unemployed. The act and conduct of the respondents is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the respondents be directed to reinstate him in service with all consequential benefits including the back wages and compensation etc.

3. On notice, the respondent No.1 appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that no legally subsisting relationship of the employer and the workman exists between him (answering respondent) and the petitioner. He (petitioner) is estopped from filing the petition by his act and conduct. The claim petition is gross misuse and abuse of the process of law. The petitioner is guilty of willfully abandoning the work and leaving the work site without any intimation or address.

On merits, it has not been disputed that the services of the petitioner were engaged as a helper by the Company (respondent No.1) under the Sub Contractor (respondent No.2) on daily wage basis. However, it has been denied that the services of the petitioner were terminated without adopting the due process of law. Actually, the petitioner left the job of his own without any reason or notice. No assurance was ever given to the petitioner that his services will be re-engaged. The petitioner has distorted the facts. The averments made in the claim petition are false to his knowledge. The petitioner cannot be allowed to take advantage of his wrongs. On account of the gross indiscipline on the part of the petitioner, the work of the project cannot be allowed to come to stand still. Infact, the petitioner never had any intention to work. He is trying to hold him (respondent No.1) to ransom. No new/fresh hands have been engaged. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the contesting respondent No.1 prays that the petition in hand be dismissed with costs.

4. The respondent No.2 could not be served for long as the petitioner failed to furnish his complete and correct address as well as comply with the various orders passed by the Court from time to time. On 09.4.2012 the petitioner was saddled with Rs.500/- as costs for non-compliance of the Court orders. Such costs were never paid. On 15.5.2012, the ld. counsel for the petitioner made a statement at bar that he does not want to proceed with the reference/claim petition against the respondent No.2 and his name be deleted from the array of the respondents. Accordingly, the name of the respondent No.2 was ordered to be deleted from the array of the parties on that day.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the replying respondent No.1. It has been pleaded that the respondent No.1 being the principal employer is liable to re-engage him (petitioner). He did not abandon the job.

6. Vide order dated 20.7.2012, following issues were struck:

1. Whether the action of the respondents not to re-engage the petitioner after 01-09-2006 is illegal and unjustified? . . . OPP.
2. Whether no relationship of employer and employee/workman exists between the petitioner and the respondent No.1 as alleged. If so, its effect? . . . OPR.
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? . . . OPR.
4. Relief.

7. I have heard the ld. counsel/AR for the petitioner and have gone through the case file.

8. At this stage, I will like to highlight that since the respondent No. 1 absented from the Court on 10.10.2012, he was ordered to be heard exparte.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : Not pressed Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2

10. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

11. The petitioner Shri Chander Bahadur Shresth stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

12. No evidence has been adduced by the respondent No. 1.

13. The deposition made by the petitioner (PW1) goes un-rebutted and unchallenged on the record. The act of the respondent No.1 not to re-engage the petitioner (workman) after 01.9.2006 when the Company restarted the work amounts to retrenchment. The testimony of PW1 goes to show that the respondents have flouted the provisions of Sections 25-F, 25-G and 25-H of the Act.

14. As already mentioned no evidence has been led by the respondent No.1. The plea of abandonment put forth by him is not established.

15. On 03.6.2010 below given order was passed by my Id. Predecessor:-

“3.6.2010 Present: Sh. Gaurav Sharma, adv. for the petitioner
Sh. Vijay Pandit, adv. for the respondent 1
None for the respondent 2

On the last date the petitioner was directed to be present. He is present in person today. The petitioner has in unequivocal terms expressed his inability to work with the respondent Hindustan Construction Company Ltd. In fact 143 references had been received from the appropriate Government in respect to the termination of workmen by the Hindustan Construction Company Ltd. The aforesaid references are pending for adjudication since 15.5.2008. It transpires from the record that the address of all the workmen in the references is Prem Niwas, Upper Julakari, Chamba, District Chamba, H.P. Even the respondent no.2 was not being served during the said interregnum. Dasti summons were issued to the petitioners, but the Id. counsel could not get the same served as none was forthcoming in pursuance to his communications addressed to the petitioners. On 30.4.2010 again dasti summons were supplied to the Id. counsel for the petitioner and even the petitioners were directed to remain present today.

As sequel thereto only six workmen have put in appearance before this Court today one being the present petitioner. All the six have refused to join the respondent company. They claim

that certain dues are payable to them by the respondent Company. The reference is limited to the question of termination alone and obviously consequential benefits accruing thereto. The statement of claim on record is only confined to the violation of the provisions of Section 25-F of the Act and as such the dues payable will also be as envisaged by the said provisions of law. Since the petitioners have expressed their unwillingness to join the company, the respondent is directed to produce entire details vis-à-vis their appointment and remuneration being paid by them till their termination/abandonment. List the matter on 5.8.2010 at Chamba.

Sd/-
K.R. CHIRAG BHANU SINGH,
Presiding Judge
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P."

16. In view of the above quoted order passed by the Court, I have at a loss to understand to how it lies in the respondent No.1 to say that no relationship of employer and employee exists between him and his adversary.

17. Such being the situation, I have no hesitation to conclude that the action of the respondent No.1 not to re-engage the petitioner after 01.9.2006 is illegal and unjustified.

18. These issues are decided in favour of the petitioner and against the contesting respondent No.1.

19. While testifying in the Court as PW1, the petitioner has given his age as 27 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he was not gainfully employed. Otherwise also, the order dated 03.6.2010 reveals that the petitioner had expressed his inability to work with the respondent/Company. For these reasons, he is not entitled to the back wages.

ISSUE NO. 3

20. Not pressed.

RELIEF (ISSUE NO. 4)

21. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent No.1 is directed to reengage the petitioner forthwith. He shall not be entitled to the seniority and continuity in service and back wages in view of the aforesaid reasons and the order dated 03.6.2010 passed by this Court. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 78/2008

Date of Institution : 15.5.2008

Date of Decision : 01.12.2012

Shri Dalip Kumar s/o Shri Marsal c/o CITU Office, Prem Niwas, Upper Julakri, Chamba, District Chamba, H.P.

....*Petitioner*

Versus

1. The Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P.

2. Shri Ashok Chouhan, Sub Contractor C/O Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. (name deleted as per order dated 15.5.2012)

....*Respondents*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. D.P. Malhotra, Adv.

For the Respondent No.1 : Already exparte

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the action of the (1) The Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. (2) Shri Ashok Chouhan, Sub Contractor C/O Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. not to re-engage Shri Dalip Kumar S/O Shri Marsal workman after 01-09-2006 when the company restarted the work after strike/stoppage of work, whereas fresh workers/his juniors have been engaged by the company without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what relief of service benefits, back wages and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was working as a Helper with the Hindustan Construction Company Limited (respondent No.1) under the respondent No.2 Shri Ashok Chouhan (Sub Contractor) on daily wage basis. On 12.6.2006, his services were terminated by the respondents on the pretext that the work has been stopped and he (petitioner) will be re-engaged on the resumption of the work. The respondents have re-started the work. New/fresh hands have been engaged by the respondents. He was not given an opportunity of re-employment despite the fact that he is/was willing to work. His services have been disengaged by the respondents by a verbal order. Neither any notice was given to him nor any reason was assigned for his retrenchment. The retrenchment compensation was also not paid to him by the respondents. From the date of his termination, he is unemployed. The act and conduct of the respondents is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the respondents be directed to reinstate him in service with all consequential benefits including the back wages and compensation etc.

3. On notice, the respondent No.1 appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that no legally subsisting relationship of the employer and the workman exists between him (answering respondent) and the petitioner. He (petitioner) is estopped from filing the petition by his act and conduct. The claim petition is gross misuse and abuse of the process of law. The petitioner is guilty of willfully abandoning the work and leaving the work site without any intimation or address.

On merits, it has not been disputed that the services of the petitioner were engaged as a helper by the Company (respondent No.1) under the Sub Contractor (respondent No.2) on daily wage basis. However, it has been denied that the services of the petitioner were terminated without adopting the due process of law. Actually, the petitioner left the job of his own without any reason or notice. No assurance was ever given to the petitioner that his services will be re-engaged. The petitioner has distorted the facts. The averments made in the claim petition are false to his knowledge. The petitioner cannot be allowed to take advantage of his wrongs. On account of the gross indiscipline on the part of the petitioner, the work of the project cannot be allowed to come to stand still. Infact, the petitioner never had any intention to work. He is trying to hold him (respondent No.1) to ransom. No new/fresh hands have been engaged. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the contesting respondent No.1 prays that the petition in hand be dismissed with costs.

4. The respondent No. 2 could not be served for long as the petitioner failed to furnish his complete and correct address as well as comply with the various orders passed by the Court from time to time. On 09.4.2012 the petitioner was saddled with Rs.500/- as costs for non-compliance of the Court orders. Such costs were never paid. On 15.5.2012 the ld. counsel for the petitioner made a statement at bar that he does not want to proceed with the reference/claim petition against the respondent No.2 and his name be deleted from the array of the respondents. Accordingly, the name of the respondent No.2 was ordered to be deleted from the array of the parties on that day.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the replying respondent No.1. It has been pleaded that the respondent No.1 being the principal employer is liable to re-engage him (petitioner). He did not abandon the job.

6. Vide order dated 20.7.2012, following issues were struck:

1. Whether the action of the respondents not to re-engage the petitioner after 01-09-2006 is illegal and unjustified?

..OPP

2. Whether no relationship of employer and employee/workman exists between the petitioner and the respondent No.1 as alleged. If so, its effect?

..OPR

3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect?

..OPR

4. Relief.

7. I have heard the ld. counsel/AR for the petitioner and have gone through the case file.

8. At this stage, I will like to highlight that since the respondent No.1 absented from the Court on 10.10.2012, he was ordered to be heard exparte.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1	:	Yes
Issue No. 2	:	No
Issue No. 3	:	Not pressed
Relief.	:	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2

10. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

11. The petitioner Shri Dalip Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

12. No evidence has been adduced by the respondent No.1.

13. The deposition made by the petitioner (PW1) goes un-rebutted and unchallenged on the record. The act of the respondent No.1 not to re-engage the petitioner (workman) after 01.9.2006 when the Company restarted the work amounts to retrenchment. The testimony of PW1 goes to show that the respondents have flouted the provisions of Sections 25-F, 25-G and 25-H of the Act.

14. As already mentioned no evidence has been led by the respondent No.1. The plea of abandonment put forth by him is not established.

15. On 03.6.2010 below given order was passed by my ld. Predecessor:-

“3.6.2010 Present: Sh. Gaurav Sharma, adv. for the petitioner
Sh. Vijay Pandit, adv. for the respondent 1
None for the respondent 2

On the last date the petitioner was directed to be present. He is present in person today. The petitioner has in unequivocal terms expressed his inability to work with the respondent Hindustan Construction Company Ltd. In fact 143 references had been received from the appropriate Government in respect to the termination of workmen by the Hindustan Construction Company Ltd. The aforesaid references are pending for adjudication since 15.5.2008. It transpires from the record that the address of all the workmen in the references is Prem Niwas, Upper Julakari, Chamba, District Chamba, H.P. Even the respondent no.2 was not being served during the said interregnum. Dasti summons were issued to the petitioners, but the ld. counsel could not get the same served as none was forthcoming in pursuance to his communications addressed to the petitioners. On 30.4.2010 again dasti summons were supplied to the ld. counsel for the petitioner and even the petitioners were directed to remain present today. As sequel thereto only six workmen

have put in appearance before this Court today one being the present petitioner. All the six have refused to join the respondent company. They claim that certain dues are payable to them by the respondent Company.

The reference is limited to the question of termination alone and obviously consequential benefits accruing thereto. The statement of claim on record is only confined to the violation of the provisions of Section 25-F of the Act and as such the dues payable will also be as envisaged by the said provisions of law. Since the petitioners have expressed their unwillingness to join the company, the respondent is directed to produce entire details vis-à-vis their appointment and remuneration being paid by them till their termination/abandonment. List the matter on 5.8.2010 at Chamba.

Sd/-
KR. CHIRAG BHANU SINGH,
Presiding Judge
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P."

16. In view of the above quoted order passed by the Court, I have at a loss to understand to how it lies in the respondent No.1 to say that no relationship of employer and employee exists between him and his adversary.

17. Such being the situation, I have no hesitation to conclude that the action of the respondent No.1 not to re-engage the petitioner after 01.9.2006 is illegal and unjustified.

18. These issues are decided in favour of the petitioner and against the contesting respondent No.1.

19. While testifying in the Court as PW1, the petitioner has given his age as 27 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he was not gainfully employed. Otherwise also, the order dated 03.6.2010 reveals that the petitioner had expressed his inability to work with the respondent/Company. For these reasons, he is not entitled to the back wages.

ISSUE NO. 3

20. Not pressed.

RELIEF (ISSUE NO. 4)

21. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent No.1 is directed to reengage the petitioner forthwith. He shall not be entitled to the seniority and continuity in service and back wages in view of the aforesaid reasons and the order dated 03.6.2010 passed by this Court. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 476/2009

Date of Institution : 20.11.2009

Date of Decision : 01.12.2012

Smt. Kamla Devi w/o Shri Om Prakash, r/o Village & P.O. Slapper, District Mandi, H.P.

....*Petitioner*

Versus

Manager, Sikand & Company Barmana, District Bilaspur, H.P.

....*Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Ashwani Kumar, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Kamla Devi W/O Shri Om Prakash by Manager, Sikand & Company Barmana, District Bilaspur, H.P. w.e.f. 13-04-2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that she is an illiterate lady belonging to the scheduled caste category. On 03.4.2000, she was appointed as a Safai Karamchari by the respondent. She served the respondent/company regularly from the date of her engagement i.e. 03.4.2000 to 12.4.2004. During the period of her employment no complaint was received against her from any quarter. In the year 2003, she suddenly fell ill. Two applications for the grant of the medical leave were given by her to the respondent, but in vain. As she fell seriously ill, she was treated in BBMB Hospital, Slapper from 02.5.2003 to 02.6.2003 i.e. for 32 days. Medical certificate regarding her ailment was presented by her before the respondent which the latter refused to receive. No leave of any kind to which she was entitled was sanctioned in her favour by the respondent. Her medical bills were also not reimbursed by the respondent. Instead, she was provided break in service by her adversary, which amounts to unfair labour practice. On 13th April, 2004, her services were terminated by the respondent by a verbal order. Neither any

show cause notice was served upon her nor she was informed regarding the misconduct, if any. After her disengagement a new person has been appointed in her place by the respondent. She does not know the name of the new appointee. From the date of her termination, she is unemployed and having no source of income. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, she (petitioner) prays that the termination order dated 13.4.2004 passed by the respondent be set aside. The respondent be directed to reinstate her in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. This Court/Tribunal has no jurisdiction to hear and decide the matter. The petitioner has no locus standi to sue. She is debarred from instituting the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a Safai Karamchhari on 03.4.2000 subject to certain terms and conditions. The facts that the petitioner is an uneducated woman belonging to the scheduled caste category have been denied for want of knowledge. It has been disputed that the petitioner served continuously up-to 12.4.2004. Actually, the petitioner served up-to 12.3.2004 only. Her work was not to the entire satisfaction of the company (respondent). It has been denied that the petitioner fell ill or was treated in BBMB Hospital, Slapper. Leave as per the Rules used to be provided to the petitioner from time to time. She was granted the leave from 02.5.2003 to 12.5.2003, 01.6.2003, 02.6.2003 and w.e.f. 09.6.2003 to 14.6.2003. The petitioner remained absent from duty on 13, 14 and 15 May, 2003. After that, she absented w.e.f. 19.5.2003 to 31.5.2003. On 16th and 17th May, 2003, the petitioner was present in the office. Her version that she was not granted the leave is incorrect. The leave was given as per the norms. The petitioner used to remain absent from the office for 7 to 10 days every month. The medical bills of the employees are not reimbursed by the company. The services of the petitioner have not been disengaged as alleged. The petitioner attended the office up-to 12.3.2004 only. Thereafter, she did not attend to her duties despite the verbal requests made to her and the notice dated 01.4.2004 sent to her. The petitioner left the job voluntarily without any intimation to him (respondent). The husband of the petitioner was also working with him (respondent). He got himself transferred to Nagrota Branch of the company. The petitioner collected the salary for the month of March, 2004 and bonus for the year 2003 on 27.10.2004. At that time she had shown her inability to do the job. Since the petitioner abandoned the job, no notice was required to be served upon her. No new/fresh hands have been engaged in place of the petitioner. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the medical certificate furnished by her was ignored by the respondent. She has been removed from service wrongly and illegally.

5. Per order dated 07.7.2011, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 13.4.2004 is violative of the provisions of Sec. 25-F and 25-G of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

..OPP

2. Whether the petition is not maintainable as this Court has no jurisdiction to entertain the present reference as alleged. If so, to what effect?

. .OPR

3. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No
 Issue No.2 : Not pressed.
 Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

8. The petitioner Smt. Kamla Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she admitted that she served as Safai Karamchhari up-to 12.3.2004 only. She also admitted that her husband is an employee of the respondent/company. She denied that when her husband was transferred to Nagrota Bagwan, she accompanied him to the said place. She admitted that she was granted the leave from 02.5.2003 to 12.5.2003. She even admitted that from 13th to 15th May, 2003, she was absent from duty. She attended the office on 16 and 17 May, 2003. She denied that a false medical certificate was procured by her after joining hands with the doctor. She also denied that she used to remain absent from duty for seven to eight days each month and voluntarily left the job on 12.3.2004. She refuted that three notices dated 01.4.2004 and 30.6.2004 were given to her by the respondent. Further, she denied that on 27.10.2004, she had visited the office to collect her bonus and on that day the respondent had requested her to join the duty. She denied that she was not interested to work as her husband was transferred to Nagrota Bagwan in the year, 2003 and abandoned the job. She admitted that as and when she attended the office her presence was marked.

9. Conversely, Shri Rajesh Sharma, Additional Branch Manager of the respondent/company appeared as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent. In the cross-examination, he admitted that the petitioner was serving as a Safai Karamchhari from the year 2000 onwards. He does not know that Mark-A (mandays chart of the petitioner) was issued by the company or not. Even he cannot tell that the medical certificate Mark-B was produced by the petitioner. He admitted that the application for the grant of medical leave was received by the company. He also admitted that before the termination of the services of the petitioner neither any notice was served upon her nor an inquiry was conducted against her. He even admitted that no retrenchment compensation was paid to the petitioner. He denied that the petitioner has been terminated in a wrongful manner and he has given a phoney statement.

10. Ex.PW1/B is the copy of the appointment letter dated 03.4.2000 issued in the name of the petitioner by the respondent. The same corresponds to Ex. RW1/I.

11. Ex. PW1/C is the working day details relating to the petitioner. It corresponds to Mark-A.

12. Ex. PW1/D and Mark-B are the copies of the medical certificate issued by Senior Medical Officer, BBMB Hospital, Slapper. As per this certificate the petitioner remained under treatment w.e.f. 02.5.2003 to 02.6.2003 and was advised rest for 32 days. She was declared fit to resume her duties from 03.6.2003.

13. Exts. PW1/E and RW1/K are the copies of the application dated 12.5.2003 submitted by the petitioner for the grant of medical leave from 02.5.2003 to 15.5.2003.

14. Ex. PW1/F is the copy of the application given by the petitioner for the grant of medical leave from 16.5.2003 to 01.6.2003.

15. Ex. RW1/B is the copy of National Festival Holidays, Casual & Sick Leave Register maintained by the respondent. It depicts that the petitioner was granted different kinds of leave from time to time.

16. Ex. RW1/C is the copy of the register of leave-with-wages kept by the respondent. It shows that the petitioner was granted the leave with wages from time to time.

17. Exts. RW1/D and E are the copies of the register of the bonus paid to the employees of the respondent. They reveal that the petitioner was paid the bonus for the years 2002-2003 and 2003-2004. The bonus for the year 2003-2004 was paid to her on 27.10.2004.

18. Exts. RW1/F and G are the copies of the register of payment of wages for the months of February and March, 2004. They clarify that the petitioner was paid the wages for the months of February and March, 2004. In March, 2004, she worked for 12 days only and was paid the wages for the same.

19. Exts. RW1/H1 to H11 are the copies of the attendance register for the months of July to December, 2003 and January, 2004 to May, 2004. They unfold that the petitioner worked only up-to 12/13 March, 2004.

20. Ex. RW1/J is the copy of an application dated 29.5.2003 given by the petitioner to the respondent. Vide this application, she requested the respondent to pay her Rs.1000/- in advance for treatment. A note has been given on this application that the petitioner is being treated at Nagrota.

21. Exts. RW1/L and M are the copies of the letters dated 29.9.2003 and 01.4.2004 written by the respondent to the petitioner regarding her absence from duty without permission of the concerned authorities.

22. Ex. RA is the copy of the attendance register for the month of May, 2003.

23. Ex. RB is the copy of the attendance register for the month of June, 2003.

24. Ex. RC is the copy of the demand notice dated 05.10.2007 served upon the respondent by the petitioner.

25. It is the admitted case of the parties that the services of the petitioner were engaged as a Safai Karamchari w.e.f. 03.4.2000 and an appointment letter was issued in her favour the copies of which are Ex. PW1/B and RW1/I.

26. The version of the petitioner is that she served the respondent/Company continuously up-to 12.4.2004. While denying the said fact the respondent has pleaded that the petitioner worked intermittently up-to 12.3.2004. She used to remain unauthorizedly absent from duty during the period of her engagement.

27. The assertion of the petitioner that she served the respondent/Company up-to 12.4.2004 stands falsified in view of the admissions made by her (petitioner) while testifying in the Court as PW1. The petitioner (PW1) in her cross-examination admitted that she served the respondent only up-to 12.3.2004. She also admitted that she remained absent from duty on different dates. Further, she admitted that as and when she attended the office her presence was marked. In view of the admissions made by the petitioner and the copies of the attendance register of different months placed on the record by the respondent, it can be safely said that the petitioner served the respondent intermittently only up-to 12/13 March, 2004 and not 12.4.2004 as claimed. Since the petitioner did not serve the respondent up-to 12.4.2004, the question of the termination of her services w.e.f. 13.4.2004 (as per reference) does not arise.

28. It appears to me that the petitioner is telling nothing else except a bundle of lies to grab the job and money. Admittedly, an application dated 29.5.2003 (Ex. RW1/J) was given by her to the respondent for payment of Rs.1000/- in advance to defray the expenses of the medicines. On this application, a note was given that the petitioner is undergoing the treatment at Nagrota where her husband was admittedly serving in the respondent/Company after his transfer. If the petitioner was being treated at Nagrota Bagwan the question of her undergoing the treatment in BBMB Hospital, Slapper from 02.5.2003 to 02.6.2003 does not arise. This clearly shows that the medical certificate Ex. PW1/D produced by her is/was forged and fabricated. She certainly remained absent from duty unauthorizedly.

29. While deposing in the Court as PW1, the petitioner denied that on 27.10.2004 she had visited the office to collect her bonus amount and on that day the respondent had asked her to attend the duties. Ex. RW1/E, the copy of the register maintained by the respondent pertaining to the bonus paid to the employees makes it abundantly clear that the bonus for the years 2003-2004 was paid to the petitioner on 27.10.2004. She thumb marked the register as a token of receipt of the bonus amount. Therefore, the contention of the petitioner that she did not visit the office of the respondent to collect the bonus on 27.10.2004 is patently wrong and baseless.

30. There is no denial of the fact that the demand notice under Section 2-A of the Act the copy of which is Ex. RC, was sent to the respondent by the petitioner. In this notice, she mentioned that her services have been terminated by the respondent on 24.9.2003 and not 13.4.2004 (as pleaded in the statement of claim/demand). This goes to show that the petitioner is not at all clear about her case. She has taken different stands at intervals suiting to her hallucination just to gain the undue advantage.

31. Section 10 (4) of the Act mandates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it for determination by the appropriate Government and the matters incidental thereto. As already mentioned, the petitioner did not serve the respondent/Company up-to 12.4.2004. Therefore, it cannot be said that her services were retrenched by the respondent on 13.4.2004. The petitioner is not speaking the truth. She is not entitled to any relief. The petitioner has not disclosed the name of any person appointed by the respondent after her alleged termination.

32. This issue is decided against the petitioner and in favour of the respondent.

ISSUES NO. 2

33. Not pressed.

RELIEF (ISSUE NO. 3)

34. As a sequel to my findings on issue No. 1 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

35. The reference is answered in the aforesaid terms.

36. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

37. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 272/2010
Date of Institution : 30.12.2010
Date of Decision : 10.12.2012

Shri Kanshi Ram s/o Shri Shibu Ram, r/o Village Balahana (Shawal), P.O. Batwara, Tehsil Sunder Nagar, District Mandi, H.P.

....*Petitioner*

Versus

The Divisional Forest Officer, Forest Division, Sunder Nagar, District Mandi, H.P.

....*Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B.S. Sankhayan, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Shri Kanshi Ram S/O Shri Shibu Ram daily wage workman by the Divisional Forest Officer, Forest Division, Sunder Nagar, District Mandi, H.P. w.e.f. May, 2008 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, whereas junior to him have been retained by the above employer, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in Forest Range Kangoo, Tehsil Sunder Nagar in the month of May, 2001. He served continuously as such up-to 31.3.2003 and completed 240 days of work in a calendar year of his employment. On 31.3.2003, his services were terminated by the Range Forest Officer, Kangoo by passing a verbal order. Neither any reason was

assigned for his disengagement nor an opportunity of being heard was afforded to him. On 12.2.2008, he (petitioner) was re-engaged by the respondent as a beldar in Kangoo Range. He worked up-to 01.5.2008 and on that day his services were once again terminated by the Range Forest Officer, Kangoo by an oral order. Neither any reason was given for his retrenchment nor an opportunity of being heard was afforded to him. He (petitioner) was never called by the respondent to work thereafter. The persons junior to him namely S/Sh. Daulat Ram and Jagdish Ram etc. are still working with the respondent/department. The work is available with the respondent. He is not being reinstated by the respondent with a malafide intention and to engage own men. S/Sh. Jeet Ram, Desh Raj, Ram Dayal and Parkash Chand etc. were employed alongwith him (petitioner). Their services have not been terminated by the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is evident from the prayer clause of the statement of claim/petition, the petitioner has claimed the following relief(s):-

“the act of respondents whereby the service of petitioner has been terminated be declared null and void and petitioner may kindly be reinstated and allowed to join in previous place of posting and he be granted all the consequential benefit and ancillary relief to petitioner w.e.f. May 2001 from the date of illegal termination, as such petitioner please be allowed to join his previous place of posting after calling for the relevant record of concerned department, and petition may please be allowed and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been denied that the services of the petitioner were engaged as a daily waged beldar in the month of May, 2001. It has been pleaded that the petitioner was appointed as a casual labourer to carry out the seasonal forestry works in Kangoo Forest Range in the month of April, 2001. He worked intermittently up-to August, 2008 and never completed 240 days of work in any calendar year of his engagement. The services of the petitioner were not terminated on 31.3.2003 and 01.5.2008 as claimed. He worked in the months of August and October, 2003 as well as August, 2008. With effect from August, 2008, the petitioner never reported back for duty and abandoned the job. He worked intermittently in various seasonal forestry works and used to leave the job of his own accord and sweet will. Forestry works are seasonal depending upon the availability of the budget. As and when the petitioner approached him (respondent) for work, his daily waged services were duly utilized. No person junior to the petitioner has been retained in service or engaged/re-engaged. Since the petitioner abandoned the job in the month of August, 2008, he is not entitled to any protection under the Act. The petitioner is precluded from claiming the parity with the workmen who worked with him (respondent) continuously. No provision of the Act has been infringed. Demand notice dated 27.4.2009 was issued by the petitioner at a belated stage. He is gainfully employed as an agriculturist. The petition is devoid of any merit. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he never abandoned the job or worked in seasonal forestry works. Fictional breaks used to be given to him by the respondent. The mandays chart produced by the respondent and the mandays chart supplied to him under the Right to Information Act, 2005 are contradictory.

5. Per order dated 04.11.2011, following issues were struck by my Id. Predecessor:-

(1) Whether the disengagement of the petitioner w.e.f. May, 2001 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Act as alleged. If so, to what relief the petitioner is entitled to?

. . OPP

(2) Whether the reference is not maintainable as alleged. If so, to what effect?

. . OPR

(3). Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?

. . OPR

(4) Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1	:	No
Issue No.2	:	Yes
Issue No.3	:	Not pressed
Relief.	:	Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Kanshi Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that in the forest department all the works are seasonal because of which the work for the whole year is not available with the department. He also admitted that the forest officials engage the labour as per the availability of the budget. He works as an agriculturist at home. Before joining the service also, he was working as an agriculturist. He admitted that as and when he was required to do the work of agriculture at home he used to voluntarily absent from his duties. Further, he admitted that the workmen, whose names have been divulged by him in the affidavit Ex. PW1/A, served intermittently as per the availability of the funds. He denied that in the month of August, 2008, he voluntarily left the job. Self stated, his services were disengaged. He denied that since he abandoned the job he is not entitled to the re-employment etc.

10. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by him. In the cross-examination, he denied that from May, 2001 to 31.3.2003 the petitioner worked for more than 240 days in each and every calendar year of his engagement. No notice was given to the petitioner before the termination of his services. Even no inquiry was conducted against him. He does not know that after the termination of the services of the petitioner S/Sh. Lachhi Ram etc. were appointed. He denied that the services of the petitioner have been dispensed with in a wrongful manner.

11. Ex. PW1/B is the mandays chart produced by the petitioner showing his working days.

12. Ex. PW1/C is the copy of the reply filed by the respondent before the Labour-cum-Conciliation Officer, Mandi during the conciliation proceedings.

13. Ex. R1 is the copy of the demand notice dated 27.4.2009 served upon the respondent by the petitioner.

14. Ex. RW1/B is the mandays chart relating to the petitioner produced by the respondent.

15. Exts. RW1/C and D are the mandays charts pertaining to S/Sh. Jit Ram and Lachhi Ram etc.

16. Section 10 (4) of the Act postulates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto.

17. As per the reference, this Court is required to decide as to whether the termination of the services of the petitioner ordered by the respondent w.e.f. the month of May, 2008 is legal and justified or not?

18. A glance of the statement of claim/demand and the rejoinder preferred by the petitioner go to show that he has challenged the verbal orders of termination dated 31.3.2003 and 01.5.2008. Since the petitioner served the respondent/department after 31.3.2003, the alleged termination ordered on 31.3.2003 is meaningless. No reference has been received from the appropriate Govt. regarding providing the artificial breaks, if any, to the petitioner by the respondent. The said controversy, if any, between the parties cannot be gone into by this Court being beyond the terms of the reference.

19. As mentioned earlier verbal termination order dated 01.5.2008 has been challenged by the petitioner in the statement of claim/demand and the rejoinder. The mandays chart Ex. PW1/B produced by him goes to show that in the month of May, 2008, the petitioner had served the respondent/department for 25 days. That being so, the question of the termination of the services of the petitioner by the respondent on 01.5.2008 does not arise.

20. The assertion of the respondent that the services of the petitioner and others used to be engaged for seasonal forestry works does not appear to be true as from the mandays chart Ex. RW1/C, it can be gathered that some of the daily wagers namely S/Sh. Jeet Ram and Jai Prakash etc. worked for more than 240 days in a particular year. A person having worked for more than 240 days in a year cannot be termed as a seasonal worker by any stretch of imagination.

21. The contention of the respondent that the petitioner left the job of his own accord and free volition in the month of August, 2008 pales into insignificance since the termination in question (as per the reference) has not been impugned on any ground by the petitioner/workman. The mandays chart Ex. RW1/B reveals that the petitioner worked for 18 days in August, 2008. For this reasons, how he can say that he was disengaged in the month of May, 2008.

22. Such being the situation, I have no hesitation to conclude that the claim petition is not maintainable in the present form. The disengagement of the services of the petitioner by the respondent in the month of May, 2008 is legal and valid. As the petitioner is not clear about his case he is not entitled to any relief.

23. These issues are decided against the petitioner and in favour of the respondent.

ISSUE No. 3

24. Not pressed.

RELIEF (ISSUE NO. 4)

25. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 455/2009

Date of Institution : 28.8.2009

Date of Decision : 11.12.2012

Shri Khub Ram s/o Shri Janglu Ram, r/o Village Thathiar, P.O. Rajwari, Tehsil Sadar, Distt. Mandi, H.P.

....Petitioner

Versus

The Dy. Director, Agriculture Mandi, Distt. Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Bhupinder Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the retrenchment of services of Sh. Khub Ram S/O Sh. Janglu Ram, workman by the Dy. Director, Agriculture Mandi, Distt. Mandi, H.P. vide retrenchment orders dated

30.6.2006 (Copy-enclosed), Specially when Govt. issued orders to regularize the services of all daily wagers etc. who have completed 8 years services as on 31.3.2004 is legal and justified? If not what relief of service benefits and amount of compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on the muster roll by the respondent w.e.f. 15.5.1996 in Seed Grading Unit of the Agriculture Department (S.M.F.) at Bhangrotu, Distt. Mandi. He served as such continuously up-to 30.6.2006. He worked for more than 10 years without any break with a minimum of 240 days of work in each and every calendar year of his engagement. As per the notification dated 9th June, 2006 issued by the Government of Himachal Pradesh, his services are/were required to be regularized on completion of 8 years of service w.e.f. 31.3.2004. The Hon'ble Apex Court has also held in the case titled as Sh. Mool Raj Upadhayaya, Petitioner versus The State of Himachal Pradesh & Ors., Respondents, 1994 (2) Services Law Reporter, 377 that the persons who have completed 10 years of service with 240 days in a year are entitled to the regularization with all consequential benefits. On 1st July, 2006, when he (petitioner) went for his duties, his presence was not marked. Instead, he was informed that the retrenchment order dated 30.6.2006 has been issued against him (petitioner) and another workman. He had served the respondent continuously with the hope that his services will be regularized. He has been terminated by the respondent wrongly and illegally as well as in violation of the policy framed by the State Government and the observations made by the Hon'ble Supreme Court of India in Mool Raj Upadhayaya's case. The respondent is/was in need of the regular labour since 17.5.1996 at the Seed Grading Unit, Bhangrotu. He (petitioner) has heard that the duties which he was performing have been assigned to the people junior to him in violation of the principles of natural justice. The work is available with the respondent. There is no likelihood of the closure of the Seed Grading Unit, Bhangrotu in future. Before the termination of his services an opportunity of being heard was not given to him. Neither one month notice before the termination nor the retrenchment compensation have been given to him. He has lost the opportunity of employment in any other government/semi government sector. He strenuously worked for the gain of the department for more than 10 years. He did request the respondent to re-employ him with back wages etc., but in vain. Ultimately, a demand notice was served upon the respondent by him. Conciliation proceedings initiated by the Labour-cum-Conciliation Officer, Mandi did not yield any result.

As such, as is apparent from the prayer clause of the statement of claim/petition, the petitioner has claimed the following relief(s):-

- “i) That the respondent may kindly be directed to re-engage the applicant/workman/petitioner in the same capacity as he was working on 30.6.2006.
- ii) That intervening period between re-engagement and disengagement may be directed to be counted towards the seniority of the petitioner.
- iii) The respondent may kindly be directed to pay the back wages from 01.07.2006 till the pendency of the Reference/Claim/re-engagement.
- iv) That the respondent may kindly be directed to regularize the services of the petitioner/Workman, on completion of 8/10 years, along with all service benefits.
- v) And/or any other relief, which this Hon'ble Tribunal may deem fit in the facts and circumstances of the case may also be granted to the petitioner.

It is, therefore, most respectfully prayed that in view of the submissions made herein above, the illegal termination of the petitioner/workman may kindly be revoked and the petitioner may kindly allowed to join forthwith and the respondent may kindly be directed to regularize the services of the petitioner, along with all benefits as claimed above, in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The same is bad for non-joinder of the necessary parties and mis-joinder of the parties. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court.

On merits, it has been owned that the services of the petitioner were engaged w.e.f. 15.5.1996. However, it has been pleaded that the petitioner served as a casual labourer from 15.5.1996 to 30.6.2006. The petitioner was not appointed as a beldar. His services have been retrenched in accordance with Section 25-F of the Act. Due notice and compensation were forwarded to the petitioner alongwith the retrenchment orders which he refused to receive. Neither the petitioner is entitled to the regularization of his services nor any provision of the Act has been flouted. Seed grading work became very less. Such work is being done by the regular staff and the contract labour. No regular or casual labourer has been engaged for the said work. After 01.4.1995, the services of the petitioner were engaged without his name being sponsored by the employment exchange. Wages in lieu of one month notice and compensation amounting to Rs.13,650/- were sent to the petitioner alongwith the retrenchment notice/order, the acceptance of which was refused by him. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be rejected.

4. No rejoinder has been preferred by the petitioner/claimant.

5. Per order dated 11.1.2011, following issues were struck by my ld. Predecessor:-

(1) Whether the termination of the petitioner w.e.f. 30.6.2006 is violative of the provisions of Sections 25-G and 25-N of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

..OPP

(2) Whether the petitioner was entitled to regularization after having completion of 8 years of continue service (with a minimum of 240 days in a calendar year) as on 31.3.2004 as alleged. If so, to what effect?

..OPP

(2) Whether the petition is not maintainable as alleged. If so, to what effect?

..OPR

(3) Whether the petition is suffers from the vice of delay and laches. If so, to what effect?

..OPR

(5) Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3	:	Yes
Issue No.4	:	Not pressed
Relief.	:	Claim petition dismissed vide perative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Khub Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he served the respondent/department from 15.5.1996 to 30.6.2006. One Shri Krishan Chand was also working with him in Grading Centre, Bhangrotu. He denied that with the passage of time, the work in the Grading Centre decreased. He also denied that after June, 2006, no work remained in the Centre for him and Shri Krishan Chand. He admitted that the respondent/department had issued a termination notice to him. One month wages in lieu of the notice period and compensation were also forwarded to him. Ex. D1 (corresponding to Ex. RW1/C) is the copy of the termination notice. He denied that he had refused to receive the registered letter containing the termination notice and the bank draft. He does not know that Ex. D2 (corresponding to Exts. RW1/D and E) are the copies of the registered envelop and acknowledgement. He admitted that Shri Chaman Lal, beldar had also come with the retrenchment notice. He refused to receive that notice. He is not aware of the fact that Ex. D3 (corresponding to Ex. RW1/F) is the copy of the report made by Shri Chaman Lal. He does not know that the draft of one month pay and retrenchment compensation was sent to him by the respondent per letter Ex. D4 (corresponding to Ex. RW1/G). He denied that he refused to receive the said registered letter. He does not know that Ex. D5 (corresponding to Ex. RW1/H) is the report made on the registered envelop by the postal authorities. He has no knowledge that one month wages and retrenchment compensation totaling Rs.13,650/- were deposited by the respondent against the fixed deposit receipt. He admitted that when he and Shri Krishan Chand were terminated from service, no person junior to them was retained in service by the respondent/department. Self stated, the work is available with the respondent which is being got done through the contractors. He denied that his services were dispensed with in a legal manner by the respondent and he has instituted a phoney petition.

10. Shri H.R. Rahi (PW2) is posted as ADO, Balh. He simply brought the record as well as proved Exts. PW2/A and B. Ex. PW2/A is the detail of contractual labour engaged at Central Seed Grading Centre, Bhangrotu. Ex. PW2/B is the information regarding daily paid casual workers working in Central Seed Store, Bhangrotu. In the cross-examination, he admitted that after the disengagement of the services of the petitioner in the year 2006 no new person was appointed.

11. Conversely, Shri A. R. Sharma, Dy. Director of Agriculture, Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A submitted in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by him. In the cross-examination, he denied that the services of the petitioner have been dispensed with in a wrongful manner.

12. RW2 is Shri Chaman Lal. He deposed that on 01.7.2006, he had approached the petitioner and Shri Krishan Chand (daily wagers) for handing over the cheques. The latter refused to receive the same. Report Ex. RW1/F in this regard was made by him.

13. Ex. D6 is the copy of the envelop of registered letter addressed to the respondent by the petitioner.

14. Ex. RW1/B is the mandays chart relating to the petitioner.
15. Ex. RW1/I is the copy of a fixed deposit receipt issued by Himachal Gramin Bank, Mandi in the name of the respondent. It depicts that the respondent had deposited Rs.13,650/- payable to the petitioner in the bank.
16. Ex. RW1/J is the copy of the letter dated 11th July, 1995 written by the Chief Secretary to the Government of Himachal Pradesh to the various authorities regarding the regularization of daily waged workers.
17. Ex. RW1/K is the copy of a letter dated 8th July, 1998 written by the Financial Commissioner (Finance) to the Government of Himachal Pradesh to various authorities. As per this letter it was directed that no person should be appointed on ad-hoc, daily, contract, tenure or part time basis without obtaining prior approval/concurrence of the Finance Department as an economy measure.
18. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on 15.5.1996 in Seed Grading Centre, Bhangrotu and he served the respondent/department as such up-to 30.6.2006. The version of the respondent that the services of the petitioner were engaged only as a casual labourer does not appear to be true as in the notice of retrenchment (Ex.D1) it has been clearly mentioned that the petitioner was appointed as a daily wager on the muster roll. The mandays chart Ex. RW1/B goes to show that the petitioner had worked for more than 240 days from the years 1997 to 2005 in each and every year. Admittedly, the services of the petitioner were retrenched per notice dated 30th June, 2006 the copies of which are Exts. D1 and RW1/C.
19. The version of the petitioner is that on 01.7.2006, when he went to the Seed Grading Centre, he was not allowed to work. His services have been dispensed with by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the services of the petitioner were terminated by taking recourse to the provisions of Section 25-F of the Act.
20. The petitioner (PW1) in his cross-examination admitted that the termination notice was sent to him by the respondent. He also admitted that one month wages in lieu of the notice period and retrenchment compensation were forwarded to him by the respondent which he refused to receive. Further, he (PW1) admitted that Shri Chaman Lal (RW2) had approached him alongwith the retrenchment notice etc., the acceptance of which was refused by him. The evidence available on the record goes to show that after the refusal of the petitioner to receive the wages and retrenchment compensation, the respondent deposited the same in the Himachal Gramin Bank. Ex. RW1/I is the copy of the fixed deposit receipt issued by the bank in favour of the respondent.
21. There is satiable evidence on the record to show that before the termination of the services of the petitioner, the provisions of Section 25-F of the Act were duly complied with by the respondent. True it is that the copy of the termination notice was not served in the prescribed manner on the appropriate Government by the respondent as envisaged under Section 25-F (c) of the Act. The same will not come to the rescue of the petitioner for the simple reason that the condition prescribed under Section 25-F (c) of the Act is neither mandatory nor a condition precedent. Clause (c) of Section 25-F of the Act is only informative in nature. In *Bombay Union of Journalists & Ors. vs. State of Bombay & Anr.*, AIR 1964 SC 1617, it has been held that:

“.....Clause (a) of S. 25-F, therefore, affords a safeguard in the interests of the retrenched employee; it requires the employer either to give him one month's notice or to pay him wages in lieu thereof before he is retrenched. Similarly, clause (b) provides that the

workman has to be paid at the times of retrenchment, compensation which shall be equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months. It would be noticed that this payment has to be made at the time of retrenchment, and this requirement again provides a safeguard in the interests of the workman.....These provisions have to be satisfied before a workman can be retrenched. The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause (c). Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the Appropriate Government about the retrenchment, and that only helps the Government keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provisions prescribed by clause (c) a condition precedent as in the case of clauses (a) and (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) and (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) and (b), is not a condition precedent”.

In view of the trite laid down in the above quoted ruling the non compliance of Section 25-F (c) of the Act is not fatal to the cause of the respondent.

22. The provisions of Section 25-N of the Act are not attracted in this case. It is there in the statements of PWs 1 and 2 that after the disengagement of the services of the petitioner, no new/fresh hands have been engaged by the respondent. The petitioner has not disclosed the name of any person junior to him retained in service by the respondent at the time of his retrenchment.

23. So far as, the assertion of the petitioner regarding regularization of his services w.e.f. 31.3.2004 is concerned, I will like to say that the trite laid down in Mool Raj Upadhyaya's case in no way helps the petitioner. Mool Raj Upadhyaya's case deals with the workmen who were in employment on 31.12.1993. Admittedly, the services of the petitioner were engaged by the respondent on 15.5.1996.

24. To be fair to the Id. counsel for the petitioner, I will like to highlight that in support of his arguments, he has cited the below given rulings:-

1. Shri Mool Raj Upadhyaya versus The State of Himachal Pradesh and Ors., 1994 (2) SLR 377 (SC).

2. The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc., Petitioners v. State of Karnataka and others etc., Respondents, AIR 1990 Supreme Court 883.

3. Pawan Kumar Versus Haryana Land Reclamation and Development Corporation Limited, Chandigarh, 1993 (1) S.L.J. 292.

4. Gur Devi and Others Versus State of Himachal Pradesh and another (C.W.P.-T-No.2891 of 2008, decided on 29th April, 2011) by the Hon'ble H.C. of H.P. I have scanned all these authorities. With humility, I feel it apposite to mention here that the same are not applicable to the facts and circumstances of the present case. So far as the observations made by our Hon'ble High Court in Gur Devi's case are concerned, there is nothing on the file to show as to when the petitioners/workmen in that case were employed by the respondent and as to whether their services were disengaged or not by the respondent/employer.

25. Such being the situation, I have no hesitation to conclude that the services of the petitioner have been rightly terminated by the respondent. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

26. These issues are decided against the petitioner and in favour of the respondent.

ISSUE No. 3

27. Taking into account my findings on the issues No.1 and 2 above, it is held that the instant claim petition is not maintainable in the present form.

28. This issue is also decided against the petitioner.

ISSUE NO. 4

29. Not pressed.

RELIEF (ISSUE NO. 5)

30. As a sequel to my findings on the issues No.1 to 3 above, the present claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 54/2008

Date of Institution : 22.2.2008

Date of Decision : 11.12.2012

Shri Krishan Chand s/o Shri Diwan Singh, r/o Village Nouru, P.O. Bhangrotu, Tehsil Sadar,
District Mandi, H.P. . . *Petitioner.*

Versus

The Deputy Director, Agriculture Mandi, Distt. Mandi, H.P.

. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Bhupinder Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the retrenchment of services of Sh. Krishan Chand S/O Shri Diwan Singh workman by the Deputy Director, Agriculture Mandi, Distt. Mandi, H.P. vide retrenchment orders dated 30.6.2006 (Copy-enclosed) is legal and justified specially when Government issued orders to regularize the services of all Daily wage/Contingent paid worker who have completed 8 years on 31.03.2004? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on the muster roll by the respondent w.e.f. 17.5.1996 in Seed Grading Unit of the Agriculture Department (S.M.F.) at Bhangrotu, Distt. Mandi. He served as such continuously up-to 30.6.2006. He worked for more than 10 years without any break with a minimum of 240 days of work in each and every calendar year of his engagement. As per the notification dated 9th June, 2006 issued by the Government of Himachal Pradesh, his services are/were required to be regularized on completion of 8 years of service w.e.f. 31.3.2004. The Hon'ble Apex Court has also held in the case titled as Sh. Mool Raj Upadhayaya, Petitioner versus The State of Himachal Pradesh & Ors., Respondents, 1994 (2) Services Law Reporter, 377 that the persons who have completed 10 years of service with 240 days in a year are entitled to the regularization with all consequential benefits. On 1st July, 2006, when he (petitioner) went for his duties, his presence was not marked. Instead, he was informed that the retrenchment order dated 30.6.2006 has been issued against him (petitioner) and another workman. He had served the respondent continuously with the hope that his services will be regularized. He has been terminated by the respondent wrongly and illegally as well as in violation of the policy framed by the State Government and the observations made by the Hon'ble Supreme Court of India in Mool Raj Upadhayaya's case. The respondent is/was in need of the regular labour since 17.5.1996 at the Seed Grading Unit, Bhangrotu. He (petitioner) has heard that the duties which he was performing have been assigned to the people junior to him in violation of the principles of natural justice. The work is available with the respondent. There is no likelihood of the closure of the Seed Grading Unit, Bhangrotu in future. Before the termination of his services, an opportunity of being heard was not given to him. Neither one month notice before the termination nor the retrenchment compensation have been given to him. He has lost the opportunity of employment in any other government/semi government sector. He strenuously worked for the gain of the department for more than 10 years. He did request the respondent to re-employ him with back wages etc., but in vain. Ultimately, a demand notice was served upon the respondent by him. Conciliation proceedings initiated by the Labourcum-Conciliation Officer, Mandi did not yield any result.

As such, as is apparent from the prayer clause of the statement of claim/petition, the petitioner has claimed the following relief(s):-

- “(i) That the Respondent may kindly be directed to re-engage the applicant/Workman/Petitioner in the same capacity as he was working on 30.6.2006;
- (v) That intervening period between re-engagement and disengagement may be directed to be counted towards the seniority of the petitioner;

- (vi) The Respondent may kindly be directed to pay the back wages from 1-7-2006 till the pendency of the Reference/Claim/Reengagement;
- (vii) That the Respondent may kindly be directed to regularise the services of the petitioner/Workman, on completion of 8/10 years, alongwith all service benefits.
- (viii) And/or any other relief, which this Hon'ble Tribunal may deem fit in the facts & circumstances of the case may also be granted to the petitioner.

It is, therefore, most respectfully prayed that in view of the submissions made herein above, the illegal termination of the petitioner/Workman may kindly be revoked and the petitioner may kindly allowed to join forthwith and the Respondent may kindly be directed to regularize the services of the petitioner, alongwith all benefits as claimed above, in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. It has been owned that the services of the petitioner were engaged w.e.f. 17.5.1996. However, it has been pleaded that the petitioner served as a casual labourer from 17.5.1996 to 30.6.2006. The petitioner was not appointed as a beldar. His services have been retrenched in accordance with Section 25-F of the Act. Due notice and compensation were forwarded to the petitioner alongwith the retrenchment orders which he refused to receive. Neither the petitioner is entitled to the regularization of his services nor any provision of the Act has been flouted. Seed grading work became very less. Such work is being done by the regular staff and the contract labour. No regular or casual labourer has been engaged for the said work. After 01.4.1995, the services of the petitioner were engaged without his name being sponsored by the employment exchange. Wages in lieu of one month notice and compensation amounting to Rs.13,650/- were sent to the petitioner alongwith the retrenchment notice/order, the acceptance of which was refused by him. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been denied that he was appointed as a casual labourer. He is/was entitled to the regularization of his services on completion of 8 years of the continuous service. The retrenchment in question is malafide Seed Grading work has not reduced as alleged. It has been owned that his services were engaged after 01.4.1995. The anomaly, if any, was at the end of the respondent. He cannot be allowed to take advantage of his own mistake.

5. Per order dated 26.12.2008, following issues were struck by one of my Id. Predecessors:-

- 1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . . OPP.
- 2. Whether the petitioner was retrenched under the provisions of Section 25-F of the Industrial Disputes Act, 1947, and the petitioner had refused to receive the retrenchment order and compensation, as alleged. . . OPR.
- 3. Relief.
- 6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Krishan Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he served in Seed Grading Centre, Bhangrotu from 17.5.1996 to 30.6.2006. Shri Khub Ram was also working with him. He denied that in the month of June, 2006, a termination notice was given to him and Shri Khub Ram by the respondent/department. He does not know that Ex. D1 (corresponding to Ex. RW1/C) is the copy of the termination notice. He denied that one month pay and retrenchment compensation were calculated by the respondent to the tune of Rs.13,650/-. He also denied that the notice and retrenchment compensation etc. were sent to him by a registered letter which he refused to receive. He does not know that Ex. D2 (corresponding to Ex. RW1/D) is the copy of the registered letter/envelop sent to him on which the endorsement of refusal was made by the postal authorities. He is not aware of the fact that the acknowledgement Ex. D3 (corresponding to Ex. RW1/E) was enclosed with the registered letter. He denied that the termination notice and compensation etc. were also sent to him through Shri Chaman Lal, beldar which he refused to receive. He feigned ignorance about the fact that Ex. D4 (corresponding to Ex. RW1/F) is the copy of the report made by Shri Chaman Lal. He refuted that draft of the retrenchment compensation etc. were sent to him under registered cover by the respondent per letter Ex. D5 (corresponding to Ex. RW1/G) the acceptance of which was refused by him. He does not know that Exts. D6 and D7 (corresponding to Ex. RW1/H) are the copies of the registered letter/envelop, acknowledgement and the endorsement made by the postman. He has no knowledge that the compensation amount etc. were deposited by the respondent against a fixed deposit receipt. He admitted that when his services and the services of Shri Khub Ram were dispensed with by the respondent, no person junior to them was retained in service by the respondent. Self stated, the respondent is getting the work done on contract basis and the work is available. He denied that his services were disengaged after issuing a notice and paying the wages etc. as no work is/was available with the respondent/department. He even denied that he has instituted a phoney petition.

10. Shri H.R. Rahi (PW2) is posted as ADO, Balh. He simply brought the record as well as proved the documents Exts. PW2/A and B. Ex. PW2/A is the detail of contractual labour engaged at Central Seed Grading Centre, Bhangrotu. Ex. PW2/B is the information regarding daily paid casual workers in respect of Central Seed Grading Store, Bhangrotu.

In the cross-examination, he admitted that after the termination of the services of the petitioner in the year 2006, no new/fresh hands have been engaged by the respondent.

11. Conversely, Shri A. R. Sharma, Dy. Director of Agriculture, Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he stated that the procurement work in the Centre has reduced. He denied that the services of the petitioner have been terminated in a wrongful manner.

12. RW2 is Shri Chaman Lal. He deposed that on 01.7.2006, he had approached the petitioner and Shri Khub Ram daily wagers for handing over the cheques. The latter refused to receive the same. Report Ex. RW1/F in this regard was made by him.

13. Ex. PW1/B is the copy of the letter dated 9th June, 2006 written by the Secretary (Personnel) to the Government of Himachal Pradesh to the various officers regarding regularization of daily waged/contingent paid workers.

14. Ex. PW1/C is the copy of the demand notice served upon the respondent by the petitioner under Section 2-A of the Act.

15. Ex. RW1/B is the mandays chart relating to the petitioner.

16. Ex. RW1/I is the copy of the fixed deposit receipt issued by the Himachal Gramin Bank, Mandi. It reveals that the amount of wages and retrenchment compensation belonging to the petitioner was deposited by the respondent in the bank.

17. Ex. RW1/J is the copy of the letter dated 11th July, 1995 written by the Chief Secretary to the Government of Himachal Pradesh to the various authorities regarding the regularization of daily waged workers.

18. Ex. RW1/K is the copy of a letter dated 8th July, 1998 written by the Financial Commissioner (Finance) to the Government of Himachal Pradesh to various authorities. As per this letter it was directed that no person should be appointed on ad-hoc, daily, contract, tenure or part time basis without obtaining prior approval/concurrence of the Finance Department as an economy measure.

19. It is the admitted case of the parties that the petitioner served the respondent/department from 17.5.1996 to 30.6.2006. The version of the respondent that the services of the petitioner were engaged only as a casual labourer does not appear to be true as in the notice of retrenchment (Ex. D1) it has been clearly mentioned that the petitioner was appointed as a daily wager on the muster roll.

20. The version of the petitioner is that on 01.7.2006 when he went to work, his presence was not marked. Instead, he was informed that his services have been retrenched by the respondent per order/notice dated 30.6.2006 the copies of which are Exts. D1 and RW1/C.

21. The petitioner has maintained that he had served the respondent for more than 10 years and was entitled to the regularization of his services w.e.f. 31.3.2004 as per the observations made by the Hon'ble Apex Court in the case titled as Shri Mool Raj Upadhyaya, Petitioner versus The State of Himachal Pradesh & Ors., Respondents, 1994 (2) Services Law Reporter 377. His services have been wrongly and illegally terminated by the respondent.

On the other hand, the respondent has pleaded that the services of the petitioner were disengaged by taking recourse to the provisions of Section 25-F of the Act. Termination notice alongwith one month salary and retrenchment compensation amounting to Rs.13,650/- were sent to the petitioner which he refused to receive.

22. The evidence available on the record coupled with the reports made by the postal authorities and the report Ex. D4 made by Shri Chaman Lal, beldar go to show that the petitioner

had refused to receive the notice of retrenchment and the money due. Only thereafter, the money belonging to the petitioner/workman was deposited by the respondent in the bank against a fixed deposit receipt. Ex. RW1/I is the copy of the FDR issued by the bank.

23. There is satiable evidence on the record to show that before the termination of the services of the petitioner the provisions of Section 25-F of the Act were duly complied with by the respondent. True it is that the copy of the termination notice was not served in the prescribed manner on the appropriate Government by the respondent as envisaged under Section 25-F (c) of the Act. The same will not come to the rescue of the petitioner for the simple reason that the condition prescribed under Section 25-F (c) of the Act is neither mandatory nor a condition precedent. Clause (c) of Section 25-F of the Act is only informative in nature. In *Bombay Union of Journalists & Ors. vs. State of Bombay & Anr.*, AIR 1964 SC 1617, it has been held that:

“.....Clause (a) of S. 25-F, therefore, affords a safeguard in the interests of the retrenched employee; it requires the employer either to give him one month's notice or to pay him wages in lieu thereof before he is retrenched. Similarly, clause (b) provides that the workman has to be paid at the times of retrenchment, compensation which shall be equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months. It would be noticed that this payment has to be made at the time of retrenchment, and this requirement again provides a safeguard in the interests of the workman.....These provisions have to be satisfied before a workman can be retrenched. The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause (c). Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the Appropriate Government about the retrenchment, and that only helps the Government keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provisions prescribed by clause (c) a condition precedent as in the case of clauses (a) and (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) and (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) and (b), is not a condition precedent”.

In view of the trite laid down in the above quoted ruling the non compliance of Section 25-F (c) of the Act is not fatal to the cause of the respondent.

24. The petitioner (PW1) and his witness Shri H.R. Rahi (PW2) admitted during the cross-examination that after the termination of the services of the petitioner in the year 2006, no new/fresh hands have been engaged by the respondent. The petitioner (PW1) admitted that at the time of his disengagement, no person junior to him was retained in service by the respondent. There is nothing on the record to establish that the provisions of Section 25-G or 25-H have been contravened by the respondent. Section 25-N of the Act is not applicable in this case.

25. So far as the assertion of the petitioner regarding the regularization of his services as per Mool Raj Upadhyaya's case is concerned, I will like to say that the said authoritative pronouncement deals with the workmen who were on rolls of the respondent/State as on 31.12.1993. Admittedly, the services of the petitioner were engaged by the respondent on 17.5.1996.

26. To be fair to the Id. counsel for the petitioner, I will like to highlight that in support of his arguments, he has cited the below given rulings:-

1. Shri Mool Raj Upadhyaya versus The State of Himachal Pradesh and Ors., 1994 (2) SLR 377 (SC).
2. The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc., Petitioners v. State of Karnataka and others etc., Respondents, AIR 1990 Supreme Court 883
3. Pawan Kumar Versus Haryana Land Reclamation and Development Corporation Limited, Chandigarh, 1993 (1) S.L.J. 292.
4. Gur Devi and Others Versus State of Himachal Pradesh and another (C.W.P.-T-No.2891 of 2008, decided on 29th April, 2011) by the Hon'ble H.C. of H.P.

I have scanned all these authorities. With humility, I feel it apposite to mention here that the same are not applicable to the facts and circumstances of the present case. So far as the observations made by our Hon'ble High Court in Gur Devi's case are concerned, there is nothing on the file to show as to when the petitioners/workmen in that case were employed by the respondent and as to whether their services were disengaged or not by the respondent/employer.

27. Such being the situation, I have no hesitation to conclude that the services of the petitioner have been rightly terminated by the respondent. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

28. These issues are decided against the petitioner and in favour of the respondent.

Relief (Issue No. 3)

29. As a sequel to my findings on the issues No.1 and 2 above, the present claim petition being meritless fails. It is, therefore, dismissed. Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 66/2011

Date of Institution : 18.5.2011

Date of Decision : 10.12.2012

1. Shri Mohar Singh s/o Shri Shesh Ram, r/o Village Khandrari, P.O. Chehani, Tehsil Banjar, Distt. Kullu, H.P.

2. Shri Chet Ram s/o Shri Lashanu, r/o Village Nagdhar, P.O. Bathrd, Tehsil Banjar, Distt. Kullu, H.P.
3. Shri Balak Ram s/o Shri Khub Ram r/o Village Nagdhar, P.O. Bathad, Tehsil Banjar, Distt. Kullu, H.P.
4. Shri Ram Saran s/o Shri Chape Ram, r/o Village Dharagarh, P.O. Gahidhar, Tehsil Banjar, Distt. Kullu, H.P.
5. Shri Bir Singh s/o Shri Sita Ram, r/o Village Khandrari, P.O. Chehani, Tehsil Banjar, Distt. Kullu, H.P.
6. Shri Pritam Singh s/o Shri Jeet Ram, r/o Village Bhumar, P.O. and Tehsil Banjar, Distt. Kullu, H.P.
7. Shri Hari Singh s/o Shri Dile Ram, r/o Village Dhar, P.O. Chehani, Tehsil Banjar, Distt. Kullu, H.P.
8. Shri Megh Singh s/o Shri Jaila, r/o Village Ghat, P.O. Chethar, Tehsil Banjar, Distt. Kullu, H.P. . . *Petitioners.*

Versus

The Executive Engineer, HPPWD Division No.1, Kullu, H.P.

. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Sh. S.P. Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether demand notice dated 30.11.2008 raised by Sh. Mohar Singh S/O Sh. Shesh Ram & 7 Other workers as per Annexure-A (copy-enclosed) before The Executive Engineer, HPPWD Division No.1, Kullu, Distt. Kullu, H.P. regarding their regularization w.e.f. year, 2004 instead of year, 2007 is legal and justified? If yes, to what service benefits and relief the concerned workmen are entitled to from concerned employer as per demand notice dated 30.11.2008?”

2. The case of the petitioners (as set out in the statement of claim/demand) is that they are/were working as beldars on daily wage basis in HPPWD Sub Division, Banjar, District Kullu continuously since the year 1994. They have completed at least 240 days of service in each and every calendar year of their engagement. The respondent/department has regularized their services vide orders dated 22.01.2007 despite the fact that they had completed eight years or more service on 31.3.2004. The Government of Himachal Pradesh pursuant to the decision of the Hon’ble Apex Court in the case titled as Mool Raj Upadhyaya vs. State of H.P., 1994 SCALE (2) 630, has decided and regularized the services of its daily waged workers working in various departments on completion of 10 years of service. Presently the Himachal Pradesh Government has directed all its departments to regularize the services of the daily wagers on completion of eight years of service as

a welfare measure on the demand of the workers. They (petitioners) had already completed more than 10 years of service before the date of their regularization. Their services are/were required to be regularized on completion of 10 years of service as per the observations made in Mool Raj Upadhyaya's case in the year 2004 instead of the year 2007. They are entitled to the regularization and work charge status including arrears of wages as per the decision of the Himachal Pradesh Government after completion of eight years of service and if the same is not possible, after the completion of 10 years of daily wage service.

As such, as is apparent from the prayer clause of the statement of claim/petition, the petitioners have claimed the following relief(s) in this case:-

“the respondents be directed to regularize the services of the applicants and to give them work charge status including arrears of wages w.e.f. 2004 as per decision of H.P. Govt./Hon'ble Supreme Court of India. And/or any other relief to which the applicants are found entitled to under the facts and circumstances of the case, may also be awarded and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioners has been infringed. The petitioners/claimants have no cause of action. No dispute under the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) exists between the parties. The petitioners being the regular Class-III and Class-IV government servants from the year 2007 are governed by the statutory rules framed under the constitution. The present industrial dispute was raised in the year 2008 after the petitioners joined as regular public servants. The dispute is purely service matter under the statutory service rules. This Court has no jurisdiction to entertain and decide the petition. The claim petition is bad on account of delay and laches on the part of the petitioners.

On merits, paras 2 to 7 of the reply read thus:-

“2. That in reply to Para -2 of the claim petition it is submitted that the engagement of the claimant as daily waged Beldars in the office of respondent is not disputed. However, the detailed Mandays for each of the claimants including their date of engagement and regularization are being placed as Annexure R-1.

3. That contents of Para-III of the claim petition are admitted to the extent of regularization of the claimants. However they have been regularized as per the prevailing policy of the State of H.P. for the regularization of its daily waged worker engaged/deployed in different department, as admissible in the case of claimants. The date of regularization in case of each of claimants is mentioned in Annexure-R-1 discussed above.

4. to 6. That in reply to Para No.4, 5 and 6 of the claim petition, it is submitted that the Law laid down by the Hon'ble Supreme Court in a case titled as Mool Raj Upadhyay V/S State of H.P. and the policy for regularization of daily wage framed there under is not disputed. However the above Law as well as policy/scheme was only applicable to the employees, who had either completed 10 years continuous services as on 31.12.1993 or the employees who had rendered one or more year of service, but not completed 10 year of service as on 31.12.1993. This scheme also does not apply to those employees who had not completed even one year of service as on 31.12.1993. Thus in the case of claimants the Policy framed under Mool Raj

Upadhayay as contended by the claimants in their claim petition is not at all applicable as their, date of engagement is lateral to 31.12.1993. The Policy framed under the Mool Raj Upadhayay was one time benefit given to the workman who had completed 10 year of service as on 31.12.1993. The above position has duly been clarified by Hon'ble H.P. High court in C.W.P. No. 718 of 2006 Gauri Dutt and others V/S State of H.P.

The case of claimants are governed with the subsequent policy/scheme framed in the year 2006 vide department of Personnel letter No. PER(AP)-C-B(2)-1/2006-Vol.II dated 9.6.2006. The date eligibility of continues service in the Policy framed in year 2006 was 31.3.2004. The Policy framed in 2006 provides with other condition the eight year of continuous service to be only an eligibility criteria the regularization shall be only from prospective effect that is after the date of order of regularization is issued after completion of codal formalities. Further the daily waged workers were to be regularized against vacant post or by creation of the post. Thus in the case of claimants vide letter No.PWE-133-11/2006-ES-III/12909-30 Dated 4.12.2006, copy of which is being attached as annexure R-2 attached. The post for regularization as per prevailing policy of 2006 were created by State Govt. As such the claimants were regularized by the respondent office in the year 2007 after completion of codal formalities. the copies of the orders of the regularization are being placed as Annexure-R 3 to R-10. The copy of policy dated 9.6.2006 is being placed annexure R-11.

Therefore keeping in view the above submissions the claimant had rightly been regularized as per the prevailing policy as applicable in their cases. The claimants being regular government servant are governed under service rules are also precluded from raising present dispute under The Industrial dispute act. The Hon'ble court has not jurisdiction to entertain and try the present dispute, which has been raised at a time when the claimant had stepped into the shoes of Public servants. The copy of demand notice dated 30.11.2008 is being annexed as Annexure R-12.

7. That the contents of this para are wrong and hence denied. A detailed reply has already been given in reply to para 4, 5 and 6 above. The claimants had rightly been regularized at the appropriate time as per the policy as applicable to their respective cases. Thus the claimants has no enforceable cause action against the replying respondent".

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioners have reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 01.5.2012, following issues were struck:-

1. Whether the petitioner and others are entitled to the regularization of their services w.e.f. the year 2004 instead of January, 2007 as alleged? . . . OPP.
2. Whether the petitioner(s) have a cause of action? . . . OPP.
3. Whether the petition is not maintainable in the present form? . . . OPR.
4. Whether this Court has no jurisdiction to hear and decide the matter? . . . OPR.

5. Whether the petition is bad on account of delay and laches as alleged. If so, its effect? . . . OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Mohar Singh (one of the petitioners) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that they are not entitled to the regularization (as claimed) as per the policy of the Government. He also denied that the services of no person junior to them have been regularized by the respondent/department and a phoney petition has been preferred.

10. Conversely, Shri Anil Sharma, Executive Engineer, HPPWD, Division No.1, Kullu (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that the services of the petitioners have not been regularized as per the policy of the Government on the due date(s).

11. Exts. RW1/A to H are the copies of the office orders issued by the respondent relating to the regularization of the petitioners on different dates.

12. Ex. RW1/I is the copy of the letter dated 9th June, 2006 written by the Secretary (Personnel) to the Government of Himachal Pradesh to the various officers and heads of departments regarding the regularization of the daily waged/contingent paid workers.

13. Ex. RW1/J is the copy of the demand notice dated 30.11.2008 served upon the respondent by the petitioners under Section 2-A of the Act.

14. Ex. RW1/K is the copy of the letter dated 04.12.2006 written by the Engineer-in-Chief, HPPWD, Shimla to all the Superintending Engineers regarding the regularization of daily wagers.

15. Ex. RW1/L is the mandays chart pertaining to the petitioners.

16. Relying upon Mool Raj Upadhyaya vs. State of Himachal Pradesh (cited supra) and State of Himachal Pradesh and others vs. Gehar Singh, 2007, (113) FLR 434 (SC), the ld. counsel for the petitioners argued that the services of his clients are required to be regularized on completion of 8-10 years of service in the year 2004 and not in the year 2007 as has been done by the respondent. On the other hand, ld. Dy. D.A. for the respondent urged that since the petitioners did not fulfill the criteria of regularization as laid down in the above quoted rulings, their services have been rightly regularized as per the policy of the Government (Ex. RW1/I) as and when the post(s) fell vacant.

17. To my mind, the contention of the ld. Dy. D.A. holds the force and is sustainable. Mool Raj Upadhyaya's case and Gehar Singh's case deal with those daily wagers who were in employment on December 31, 1993. Admittedly, the petitioners/claimants joined the respondent/department thereafter. Therefore, the catena of law laid down in these rulings in no way helps the petitioners.

18. The evidence available on the record makes it crystal clear that the services of the petitioners were regularized as per the prevailing policy of the Government. They joined without any protest. That being so, I am at a loss to understand as to how and on what basis the petitioners are canvassing that their services have not been regularized on due date(s) by the respondent. The petitioners have not divulged the name of any person junior to them whose services have been regularized by the respondent earlier to them. They (petitioners) have no cause of action and are not entitled to any relief.

19. These issues are decided against the petitioners and in favour of the respondent.

Issue No. 3

20. Taking into account my findings on the issues No.1 and 2 above, it is held that the instant claim petition is not maintainable in the present form.

21. This issue is also decided against the petitioners and in favour of the respondent.

Issues No. 4 & 5

22. Not pressed.

Relief (Issue No. 6)

23. As a sequel to my findings on the various issues, the present claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 8/2011

Date of Institution : 31.3.2011

Date of Decision : 10.12.2012

1. Shri Moti Ram s/o Shri Pyare Ram, r/o Village Khandragi, P.O. Chahani, Tehsil Banjar, Distt. Kullu, H.P.
2. Shri Gurdayal s/o Shri Sawaru, r/o Village Nagdhar, P.O. Bathad, Tehsil Banjar, Distt. Kullu, H.P.
3. Shri Tek Ram s/o Shri Khub Ram, r/o Village & P.O. Chahani, Tehsil Banjar, Distt. Kullu, H.P.
4. Shri Shes Ram s/o Shri Alam Chand, r/o Village Dhar, P.O. Chahani, Tehsil Banjar, Distt. Kullu, H.P. . . *Petitioners.*

Versus

The Executive Engineer, HPPWD Division No.1, Kullu, H.P.

. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Sh. S.P. Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether demand notice dated 30.11.2008 raised by Sh. Moti Ram S/O Sh. Pyare Ram & 3 other workers as per Annexure-A (copy-enclosed) before The Executive Engineer, HPPWD Division No.1, Kullu, Distt. Kullu, H.P. regarding their regularization w.e.f. 2004 instead of January, 2007 is legal and justified? If yes, to what service benefits and relief the concerned workmen are entitled to from the concerned employer? If not, what are its legal effects?”

2. The case of the petitioners (as set out in the statement of claim/demand) is that they are/were working as beldars/Mate on daily wage basis in HPPWD Sub Division, Banjar, District Kullu continuously since the year 1994. They have completed at least 240 days of service in each and every calendar year of their engagement. The respondent/department has regularized their services vide orders dated 27.01.2007 despite the fact that they had completed eight years or more service on 31.3.2004. The Government of Himachal Pradesh pursuant to the decision of the Hon'ble Apex Court in the case titled as Mool Raj Upadhyaya vs. State of H.P., 1994 SCALE (2) 630, has decided and regularized the services of its daily waged workers working in various departments on completion of 10 years of service. Presently the Himachal Pradesh Government has directed all its departments to regularize the services of the daily wagers on completion of eight years of service as a welfare measure on the demand of the workers. They (petitioners) had already completed more than 10 years of service before the date of their regularization. Their services are/were required to be regularized on completion of 10 years of service as per the observations

made in Mool Raj Upadhyaya's case in the year 2004 instead of the year 2007. They are entitled to the regularization and work charge status including arrears of wages as per the decision of the Himachal Pradesh Government after completion of eight years of service and if the same is not possible, after the completion of 10 years of daily wage service.

As such, as is apparent from the prayer clause of the statement of claim/petition, the petitioners have claimed the following relief(s) in this case:-

“the respondent be directed to regularize the services of the applicants and to give them work charge status including arrears of wages w.e.f. 2004 as per decision of H.P. Govt./Hon'ble Supreme Court of India. And/or any other relief to which the applicants are found entitled to under the facts and circumstances of the case, may also be awarded and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioners has been infringed. The petitioners/claimants have no cause of action. No dispute under the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) exists between the parties. The petitioners being the regular Class-III and Class-IV government servants from the year 2007 are governed by the statutory rules framed under the constitution. The present industrial dispute was raised in the year 2008 after the petitioners joined as regular public servants. The dispute is purely service matter under the statutory service rules. This Court has no jurisdiction to entertain and decide the petition. The claim petition is bad on account of delay and laches on the part of the petitioners.

On merits, paras 2 to 7 of the reply read thus:-

“2. That in reply to Para -2 of the claim petition it is submitted that the engagement of the claimant as daily waged Beldars in the office of respondent is not disputed. However, the detailed Mandays for each of the claimants including their date of engagement and regularization are being placed as Annexure R-1.

3. That contents of Para-III of the claim petition are admitted to the extent of regularization of the claimants. However they have been regularized as per the prevailing policy of the State of H.P. for the regularization of its daily waged worker engaged/deployed in different department, as admissible in the case of claimants. The date of regularization in case of each of claimants is mentioned in Annexure-R-1 discussed above.

4. to 6. That in reply to Para No.4, 5 and 6 of the claim petition, it is submitted that the Law laid down by the Hon'ble Supreme Court in a case titled as Mool Raj Upadhyaya V/S State of H.P. and the policy for regularization of daily wage framed there under is not disputed. However the above Law as well as policy/scheme was only applicable to the employees, who had either completed 10 years continuous services as on 31.12.1993 or the employees who had rendered one or more year of service, but not completed 10 year of service as on 31.12.1993. This scheme also does not apply to those employees who had not completed even one year of service as on 31.12.1993. Thus in the case of claimants the Policy framed under Mool Raj Upadhyaya as contended by the claimants in their claim petition is not at all applicable as their, date of engagement is lateral to 31.12.1993. The Policy framed under the Mool Raj Upadhyaya was one time benefit given to the workman

who had completed 10 year of service as on 31.12.1993. The above position has duly been clarified by Hon'ble H.P. High court in C.W.P. No. 718 of 2006 Gauri Dutt and others V/S State of H.P.

The case of claimants are governed with the subsequent policy/scheme framed in the year 2006 vide department of Personnel letter No. PER(AP)-C-B(2)-1/2006-Vol.II dated 9.6.2006. The date eligibility of continues service in the Policy framed in year 2006 was 31.3.2004. The Policy framed in 2006 provides with other condition the eight year of continuous service to be only an eligibility criteria the regularization shall be only from prospective effect that is after the date of order of regularization is issued after completion of codal formalities. Further the daily waged workers were to be regularized against vacant post or by creation of the post. Thus in the case of claimants vide letter No.PWE-133-11/2006-ES-III/12909-30 Dated 4.12.2006, copy of which is being attached as annexure R-2 attached. The post for regularization as per prevailing policy of 2006 were created by State Govt. As such the claimants were regularized by the respondent office in the year 2007 after completion of codal formalities. the copies of the orders of the regularization are being placed as Annexure-R 3 to R-6. The copy of policy dated 9.6.2006 is being placed annexure R-7.

Therefore keeping in view the above submissions the claimant had rightly been regularized as per the prevailing policy as applicable in their cases. The claimants being regular government servant are governed under service rules are also precluded from raising present dispute under The Industrial dispute act. The Hon'ble court has not jurisdiction to entertain and try the present dispute, which has been raised at a time when the claimant had stepped into the shoes of Public servants. The copy of demand notice dated 30.11.2008 is being annexed as Annexure R-8.

7. That the contents of this para are wrong and hence denied. A detailed reply has already been given in reply to para 4, 5 and 6 above. The claimants had rightly been regularized at the appropriate time as per the policy as applicable to their respective cases. Thus the claimants has no enforceable cause action against the replying respondent.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioners have reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 01.5.2012, following issues were struck:-

1. Whether the petitioner and others are entitled to the regularization of their services w.e.f. the year 2004 instead of January, 2007 as alleged? . . . OPP.
2. Whether the petitioner(s) have a cause of action? . . . OPP.
3. Whether the petition is not maintainable in the present form? . . . OPR.
4. Whether this Court has no jurisdiction to hear and decide the matter? . . . OPR.
5. Whether the petition is bad on account of delay and laches as alleged. If so, its effect? . . . OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Shes Ram (one of the petitioners) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that they are not entitled to the regularization (as claimed) as per the policy of the Government. He also denied that the services of no person junior to them have been regularized by the respondent/department and a phoney petition has been preferred.

10. Conversely, Shri Anil Sharma, Executive Engineer, HPPWD, Division No.1, Kullu (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that the services of the petitioners have not been regularized as per the policy of the Government on the due date(s).

11. Exs. RW1/A to D are the copies of the office orders issued by the respondent relating to the regularization of the petitioners on 27.01.2007.

12. Ex. RW1/E is the copy of the letter dated 9th June, 2006 written by the Secretary (Personnel) to the Government of Himachal Pradesh to the various officers and heads of departments regarding the regularization of the daily waged/contingent paid workers.

13. Ex. RW1/F is the copy of the demand notice dated 30.11.2008 served upon the respondent by the petitioners under Section 2-A of the Act.

14. Ex. RW1/G is the copy of the letter dated 04.12.2006 written by the Engineer-in-Chief, HPPWD, Shimla to all the Superintending Engineers regarding the regularization of daily wagers.

15. Ex. RW1/H is the mandays chart pertaining to the petitioners.

16. Relying upon Mool Raj Upadhyaya vs. State of Himachal Pradesh (cited supra) and State of Himachal Pradesh and others vs. Gehar Singh, 2007, 113 FLR 434 (SC), the ld. counsel for the petitioners argued that the services of his clients are required to be regularized on completion of 8-10 years of service in the year 2004 and not in the year 2007 as has been done by the respondent. On the other hand, ld. Dy. D.A. for the respondent urged that since the petitioners did not fulfill the criteria of regularization as laid down in the above quoted rulings, their services have been rightly regularized as per the policy of the Government (Ex. RW1/E) as and when the post(s) fell vacant.

17. To my mind, the contention of the ld. Dy. D.A. holds the force and is sustainable. Mool Raj Upadhyaya's case and Gehar Singh's case deal with those daily wagers who were in employment on December 31, 1993. Admittedly, the petitioners/claimants joined the respondent/department thereafter. Therefore, the catena of law laid down in these rulings in no way helps the petitioners.

18. The evidence available on the record makes it crystal clear that the services of the petitioners were regularized as per the prevailing policy of the Government. They joined without any protest. That being so, I am at a loss to understand as to how and on what basis the petitioners are canvassing that their services have not been regularized on due date(s) by the respondent. The petitioners have not divulged the name of any person junior to them whose services have been regularized by the respondent earlier to them. They (petitioners) have no cause of action and are not entitled to any relief.

19. These issues are decided against the petitioners and in favour of the respondent.

Issue No. 3

20. Taking into account my findings on the issues No.1 and 2 above, it is held that the instant claim petition is not maintainable in the present form.

21. This issue is also decided against the petitioners and in favour of the respondent.

Issues No.4 & 5

22. Not pressed.

Relief (Issue No. 6)

23. As a sequel to my findings on the various issues, the present claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.
Announced in the open Court today this 10th day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 273/2010

Date of Institution : 30.12.2010

Date of Decision : 10.12.2012

Shri Om Parkash s/o Shri Keshav Ram, r/o Village Balahana (Shawal), P.O. Batwara,
Tehsil Sunder Nagar, District Mandi, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Forest Division, Sunder Nagar, District Mandi, H.P.
. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B.S. Sankhayan, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Shri Om Parkash S/O Shri Keshav Ram daily wage workman by the Divisional Forest Officer, Forest Division, Sunder Nagar, District Mandi, H.P. w.e.f. June, 2005 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, whereas junior to him have been retained by the above employer, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in Forest Range Kangoo, Tehsil Sunder Nagar in the month of June, 2001. He served continuously as such up-to 31.3.2003 and completed 240 days of work in a calendar year of his employment. On 31.3.2003, his services were terminated by the Range Forest Officer, Kangoo by passing a verbal order. Neither any reason was assigned for his disengagement nor an opportunity of being heard was afforded to him. On 12.2.2008, he (petitioner) was re-engaged by the respondent as a beldar in Kangoo Range. He worked up-to 01.5.2008 and on that day his services were once again terminated by the Range Forest Officer, Kangoo by an oral order. Neither any reason was given for his retrenchment nor an opportunity of being heard was afforded to him. He (petitioner) was never called by the respondent to work thereafter. The persons junior to him namely S/Sh. Daulat Ram and Jagdish Ram etc. are still working with the respondent/department. The work is available with the respondent. He is not being reinstated by the respondent with a malafide intention and to engage own men. S/Sh. Jeet Ram, Desh Raj, Ram Dayal and Parkash Chand etc. were employed alongwith him (petitioner). Their services have not been terminated by the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is evident from the prayer clause of the statement of claim/petition, the petitioner has claimed the following relief(s):-

“the act of respondents whereby the service of petitioner has been terminated be declared null and void and petitioner may kindly be reinstated and allowed to join in previous place of posting and he be granted all the consequential benefit and ancillary relief to petitioner w.e.f. June 2001 from the date of illegal termination, as such petitioner please be allowed to join his previous place of posting after calling for the relevant record of concerned department, and petition may please be allowed and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been denied that the services of the petitioner were engaged as a daily waged beldar. However, it has been pleaded that the petitioner was appointed as a casual labourer to carry out the seasonal forestry works in the month of June, 2001. He worked intermittently up-to the month of June, 2004 and never completed 240 days of work in any calendar year to his engagement. The services of the petitioner were never terminated on 31.3.2003 and 01.5.2008 as claimed. He worked in the months of August, October, November, 2003 and June, 2004. From June, 2004 onwards he never reported for duty. The petitioner used to work as per his sweet will and convenience in different forestry seasonal works. In the month of June, 2004 the petitioner voluntarily left the service. Forestry works are seasonal depending on the availability of the budget. As and when the petitioner approached him (respondent), his daily waged services were utilized. No person junior to the petitioner has been retained in service or engaged/re-engaged. The petitioner is precluded from claiming parity with the workmen who worked in continuity with him (respondent). The reference in question is erroneous since as per the same the alleged retrenchment took place in the month of June, 2005. Demand notice dated 27.4.2009 was issued by the petitioner at a belated stage. He is gainfully employed as an agriculturist. Since the petitioner abandoned the job he is not entitled to any protection under the Act. No provision of the Act has been infringed. The petition is devoid of any merit.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that his services were not engaged for seasonal forestry works. Artificial breaks used to be given to him. He never abandoned the job. The mandays chart produced by the respondent and the mandays chart supplied to him under the Right to Information Act, 2005 are contradictory.

5. Per order dated 04.11.2011, following issues were struck by my Id. Predecessor:-

- (i) Whether the disengagement of the petitioner w.e.f. May, 2001 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
- (ii) Whether the reference is not maintainable as alleged. If so, to what effect? . . . OPR.
- (iii). Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? . . . OPR.

(iv). Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Om Parkash (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he did not serve the respondent in the year 2008 and voluntarily left the job. He also denied that the instant industrial dispute has been raised by him relating to his retrenchment in the month of June, 2005. He admitted that the work in the forest department is mostly seasonal. The labourers are employed by the department as per the availability of the funds. The persons whose names have been disclosed in the claim petition and the proof affidavit Ex. PW1/A served in the seasonal forestry works like him. He denied that for the said reason only, he did not complete 240 days of work in any calendar year of his engagement. He denied that since he abandoned the job he is not entitled to the re-employment etc.

10. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he deposed that before the termination of the services of the petitioner neither any notice was given to him nor an inquiry was conducted against him. He does not know that after the disengagement of the petitioner S/Sh. Lachhi Ram etc. were employed. He denied that the services of the petitioner have been dispensed with in a wrongful manner.

11. Ex. PW1/B is the mandays chart produced by the petitioner showing his working days.

12. Ex. PW1/C is the copy of the reply filed by the respondent before the Labour-cum-Conciliation Officer, Mandi during the conciliation proceedings.

13. Ex. R1 is the copy of the demand notice dated 27.4.2009 served upon the respondent by the petitioner.

14. Ex. RW1/B is the mandays chart relating to the petitioner produced by the respondent.

15. Exts. RW1/C and D are the mandays charts pertaining to S/Sh. Jit Ram and Lachhi Ram etc.

16. Section 10 (4) of the Act postulates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto.

17. As per the reference this Court is required to decide as to whether the termination of the services of the petitioner ordered by the respondent w.e.f. the month of June, 2005 is legal and justified or not?

18. A glance of the statement of claim/demand and the rejoinder preferred by the petitioner go to show that he has not challenged the alleged termination w.e.f. June, 2005 (as per the reference) on any count. Therefore, it cannot be said that the services of the petitioner were wrongly and illegally terminated by the respondent in the month of June, 2005.

19. True it is that the discrepancy exists between the mandays charts Exts. PW1/B and RW1/B. There is no cogent and convincing evidence on the record to show that the mandays chart Ex. RW1/B produced by the respondent is incorrect. The assertion of the petitioner that he had served the respondent in the year 2008 does not appear to be true as the same does not find support from the mandays chart Ex. PW1/B produced by him.

20. The version of the respondent that the services of the petitioner and others used to be engaged for seasonal forestry works does not appear to be true as from the mandays chart Ex. RW1/C, it can be gathered that some of the daily wagers namely S/Sh. Jeet Ram and Jai Prakash etc. worked for more than 240 days in a particular year. A person having worked for more than 240 days in a year cannot be termed as a seasonal worker by any stretch of imagination.

21. The contention of the respondent that the petitioner left the job of his own accord and free volition in the month of June, 2004 pales into insignificance since the termination in question (as per the reference) has not been impugned on any ground by the petitioner/workman.

22. Such being the situation, I have no hesitation to conclude that the claim petition is not maintainable in the present form. The disengagement of the services of the petitioner by the respondent in the month of June, 2005 is legal and valid. As the petitioner is not clear about his case he is not entitled to any relief.

23. These issues are decided against the petitioner and in favour of the respondent.

Issue No. 3

24. Not pressed.

Relief (Issue No. 4)

25. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 280/2009

Date of Institution : 23.5.2009

Date of Decision : 10.12.2012

Smt. Radha Devi w/o Shri Kesaru Ram, r/o Village Khandedhar, P.O. Khuhan, Sub Tehsil Balichowki, Distt. Mandi, H.P. . . *Petitioner.*

Versus

1. Pradhan, Village Education Committee & PTA Saraj-II, Balichowki, Distt. Mandi, H.P.
2. Block Primary Education Officer, Saraj-II, Distt. Mandi, H.P.
3. Sh. Lal Dass, Head Master, Primary School Phagaludhar, Suragi, P.O. Khuahan, Sub Tehsil Balichowki, Distt. Mandi, H.P. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.P. Parmar, Adv.

For the Respondent No.1 : Sh. Satish Kumar, Adv.

For the Respondents No.2 & 3 : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the service of Smt. Radha Devi W/O Sh. Kesaru Ram by the (i) Pradhan, Village Education Committee & PTA Saraj-II, Balichowki, Distt. Mandi, H.P. (ii) Block Primary Education Officer, Saraj-II, Distt. Mandi, H.P. (iii) Head Master, Primary School Phagaludhar, Suragi, P.O. Khuahan, Sub Tehsil Balichowki, Distt. Mandi, H.P. w.e.f. 06.1.2007 without any notice and compensation is proper and justified? If not, what relief of service benefits the above worker is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged by the respondents on daily wage basis as Mid-day Meal Worker/Helper. She served the respondents uninterruptedly up-to 05.1.2007. On the next day i.e. 06.1.2007, her services were terminated by the respondents by a verbal order. No notice was given to her. She has been removed from service by the respondents in contravention of the provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, she (petitioner) prays that the termination order be set aside. The respondents be directed to reinstate her in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. They submitted separate replies controverting the averments made in the petition/statement of claim. The respondent No.1 in his reply has denied that the services of the petitioner were engaged as a Mid-day Meal Worker/Helper on daily wage basis. It has been pleaded that the petitioner was only a fuel supplier. Her total dues have been paid by the concerned authority. The petitioner was never appointed by the PTA. Therefore, the question of the termination of her services does not arise. Smt. Khimi Devi is working as a Mid-day Meal Worker/Helper since the year 2004. The status of the petitioner is that of a fuel supplier till date. No provision of the Act has been infringed.

In these circumstances, the respondent No.1 prays that the petition in hand be dismissed.

4. The respondents No.2 and 3 in their joint reply have also disputed that the petitioner was appointed on daily wage basis as a Mid-day Meal Worker/Helper. It has been maintained that as per para 13 of the guidelines relating to National Programme of Nutritional Support to Primary Education, 2004, the work of mid-day meal is to be executed by the agencies i.e. Village Education Committee and Parents Teacher Association. The appointments of the cook, helper and supplier of fuel are to be made by the concerned agency. In Government Primary School, Suragi Village Education Committee (VEC) has been constituted as per the guidelines. VEC had appointed/contracted the petitioner as a fuel supplier in the year 2004. She is working as fuel supplier till date. Payment of approximately Rs.500/- each month has been made to the petitioner as per the strength of the students. Smt. Khimi Devi was appointed as a cook by the VEC vide resolution dated 27.8.2004. On the complaint of the petitioner, an inquiry was conducted by the Centre Head Teacher on the directions of the BPEO. Full opportunity was afforded to the concerned VEC and other interested persons to participate in the inquiry. It surfaced that neither the petitioner was appointed as a cook/helper in the school nor she executed any such work. She is only a fuel supplier and her entire dues have been duly paid to her. The claim put forth by the petitioner is false and frivolous. The same is not tenable in the eyes of law. Since the services of the petitioner were never engaged as a Mid-day Meal Worker/Helper on daily wage basis, the question of the termination of her services does not arise. No provision of the Act has been flouted. The petitioner had only contracted to supply the fuel which she is supplying uptil now. Up-to date payment has been made to her by the VEC.

As such, the respondents No. 2 and 3 too pray that the instant claim petition be rejected.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been pleaded that either she has been defrauded by the committee or the committee has forgotten to enter her name as helper and fuel supplier. There were only two vacancies. It stands admitted that Smt. Khimi Devi was appointed as a cook. She (petitioner) was attached as a helper with Smt. Khimi Devi. She (petitioner) also worked as a fuel worker. There is/was no vacancy of fuel worker/supplier as the strength of the students in the school was less than 100. She was appointed on payment of Rs.200/- per month. The committee paid her Rs.500/- each month at a stretch. Proper inquiry was not conducted by the BPEO. The Inquiry Officer danced to the tunes of the committee (VEC). She (petitioner) has not been paid fully for job performed by her. One Smt. Lata Devi has been appointed in her place in a wrongful manner.

6. Per order dated 11.5.2011, following issues were struck by my ld. Predecessor:-

- (1) Whether the petitioner has been appointed as Mid-day Meal worker/helper and thereupon her services have been terminated on 06.1.2007 is violative of the provisions of Sections 25-F and 25-G of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
- (2) Relief.
7. I have heard the ld. counsel/AR for the parties and have gone through the case file.
8. For the reasons detailed here under, my findings on the above issues are as follows:

Issue No.1 : No

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

9. The petitioner Smt. Radha Devi stepped into the witness box as PW1. She reiterated on oath the contents of the petition/statement of claim in its entirety. She also stated that her services were engaged as a helper in Mid-day Meal Scheme in the year 2004.

In the cross-examination, she stated that nowadays the respondents pay her Rs.350-400/- for supplying the fuel wood. She denied that Smt. Lata Devi too supplies the fuel wood to the school. She denied that her services were never engaged by the VEC as a Mid-day Meal Worker/Helper. She admitted that even now she supplies the fuel wood to the school. Smt. Lata Devi is serving as Mid-day Meal Worker/Helper. She denied that her services were not terminated by the respondents. She also denied that she and Smt. Lata Devi simply supply the fuel wood to the school. She admitted that Smt. Khimi Devi was appointed by the committee to cook the food. She denied that she has given a phoney statement.

10. Conversely, Shri Gopi Nand Verma, B.P.E.O. (respondent No. 2) testified as RW1. He simply brought the record and proved the inquiry report Ex. RW1/A. Ex. RW1/B is the copy of the resolution passed by the committee vide which the services of Smt. Khimi Devi were engaged to prepare the meals. He (RW1) also placed on the file Mark-A i.e. the copy of the guidelines issued by the Government pertaining to National Programme of Nutritional Support to Primary Education.

11. Shri Jhabe Ram (RW2) is the Pradhan of the PTA. In his affidavit Ex. RW2/A submitted under Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that he is telling the lies.

12. RW3 is Shri Lal Dass he supported the version of the respondents. Ex. RW3/A is the affidavit filed by him as per Order 18 Rule 4 CPC. He continued to state that the receipt Ex. PW1/A vide which the payment was made to the petitioner bears his signatures as he was serving as a teacher in Government Primary School Suragi.

In the cross-examination, he denied that the petitioner was appointed as a Mid-day Meal Worker/Helper.

13. Exts. PW1A and B are the receipts vide which the payments were made to the petitioner by the respondents from time to time.

14. Mark-A is the copy of a receipt dated 17.10.2004 issued by the petitioner/claimant. It depicts that Rs.484/- were paid to the petitioner by the school authorities for supplying the fuel wood.

15. The version of the petitioner is that she was appointed as a Mid-day Meal Worker/Helper by the respondents in the year 2004 which fact has been denied by the latter.

16. It is for the petitioner to establish that she is a workman as defined under Section 2 (s) of the Act. She has not placed on the record any document in the shape of the appointment letter or resolution of the PTA/VEC etc. show that her services were engaged as a Mid-day Meal Worker/Helper by the respondent. Rather, from the receipt dated 17.10.2004 (Mark-A), it can be gathered that Rs.484/- were paid to the petitioner by the respondents for supplying the fuel wood. It is not the case of the petitioner that this receipt is a forged or fabricated document. In view of the contents of the receipt Mark-A, I fail to understand as to how the petitioner is claiming that her services were engaged as a Mid-day Meal Worker/Helper.

17. It is the admitted case of the parties that vide resolution dated 27.8.2004 the copy of which is Ex. RW1/B. Smt. Khimi Devi was appointed as a cook in the school. She is/was the best person to tell as to whether the petitioner is/was working as a Mid-day Meal Worker/Helper or not? Smt. Khimi Devi has not been examined by the petitioner to substantiate her claim. Since the material witness has been withheld by the petitioner, an adverse inference under Section 114(g) of the Indian Evidence Act has to be drawn against her.

18. Otherwise too, perusal of Mark-A i.e. the copy of the scheme clarifies that the mid-day meal cook and worker/helper are to be paid only the honorarium and not the wages. Thus, the question of the appointment of the petitioner on daily wage basis as a Mid-day Meal Worker/Helper does not arise. Moreover, the petitioner (PW1) in her cross-examination admitted that even now she supplies the fuel wood to the school.

19. Such being the situation, I have no hesitation to conclude that the services of the petitioner were never engaged as a Mid-day Meal Worker/Helper by the respondents. No relationship of employer and workman exists between the parties. That being so, the question of the termination of the services of the petitioner by the respondents in contravention of the provisions of the Act does not arise.

20. It appears to me that the avarice of the petitioner to grab the government job and money has forced her to file a totally false and baseless claim. She is not entitled to any relief.

21. This issue is decided against the petitioner and in favour of her opponents.

Relief (Issue No. 2)

22. As a sequel to my findings on the issue No.1 above, the instant claim petition being meritless fails. It is, therefore, dismissed. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 188/2008

Date of Institution : 15.5.2008

Date of Decision : 01.12.2012

Shri Ramu Baskey s/o Late Shri Saiba Baskey C/O CITU Office, Prem Niwas, Upper
Julakri, Chamba, District Chamba, H.P. . . *Petitioner.*

Versus

1. The Project Manager, Hindustan Construction Company Limited, Village Kalsui,
P.O. Janghi via Mehla, District Chamba, H.P.

2. Shri Lal Mohan Jena Sub Contractor C/O Project Manager, Hindustan Construction
Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. (name deleted as
per order dated 15.5.2012) . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. D.P. Malhotra, Adv.

For the Respondent No.1 : Already exparte

AWARD

The below given reference has been received from the appropriate Government for
adjudication:

“Whether the action of the (1) The Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. (2) Shri Lal Mohan Jena, Sub Contractor C/O Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. not to re-engage Shri Ramu Baskey S/O Late Shri Saiba Baskey workman after 01-09-2006 when the company re-started the work after strike/stoppage of work, whereas fresh workers/his juniors have been engaged by the company without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what relief of service benefits, back wages and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was working as a Driller with the Hindustan Construction Company Limited (respondent No.1) under the respondent No.2 Shri Lal Mohan Jena (Sub Contractor) on daily wage basis. On

12.6.2006, his services were terminated by the respondents on the pretext that the work has been stopped and he (petitioner) will be re-engaged on the resumption of the work. The respondents have re-started the work. New/fresh hands have been engaged by the respondents. He was not given an opportunity of re-employment despite the fact that he is/was willing to work. His services have been disengaged by the respondents by a verbal order. Neither any notice was given to him nor any reason was assigned for his retrenchment. The retrenchment compensation was also not paid to him by the respondents. From the date of his termination, he is unemployed. The act and conduct of the respondents is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, he (petitioner) prays that the respondents be directed to reinstate him in service with all consequential benefits including the back wages and compensation etc.

3. On notice, the respondent No.1 appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that no legally subsisting relationship of the employer and the workman exists between him (answering respondent) and the petitioner. He (petitioner) is estopped from filing the petition by his act and conduct. The claim petition is gross misuse and abuse of the process of law. The petitioner is guilty of willfully abandoning the work and leaving the work site without any intimation or address.

On merits, it has not been disputed that the services of the petitioner were engaged as a helper by the Company (respondent No.1) under the Sub Contractor (respondent No.2) on daily wage basis. However, it has been denied that the services of the petitioner were terminated without adopting the due process of law. Actually, the petitioner left the job of his own without any reason or notice. No assurance was ever given to the petitioner that his services will be re-engaged. The petitioner has distorted the facts. The averments made in the claim petition are false to his knowledge. The petitioner cannot be allowed to take advantage of his wrongs. On account of the gross indiscipline on the part of the petitioner, the work of the project cannot be allowed to come to stand still. Infact, the petitioner never had any intention to work. He is trying to hold him (respondent No.1) to ransom. No new/fresh hands have been engaged. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the contesting respondent No. 1 prays that the petition in hand be dismissed with costs.

4. The respondent No.2 could not be served for long as the petitioner failed to furnish his complete and correct address as well as comply with the various orders passed by the Court from time to time. On 09.4.2012 the petitioner was saddled with Rs.500/- as costs for non-compliance of the Court orders. Such costs were never paid. On 15.5.2012 the ld. counsel for the petitioner made a statement at bar that he does not want to proceed with the reference/claim petition against the respondent No.2 and his name be deleted from the array of the respondents. Accordingly, the name of the respondent No.2 was ordered to be deleted from the array of the parties on that day.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the replying respondent No.1. It has been pleaded that the respondent No.1 being the principal employer is liable to re-engage him (petitioner). He did not abandon the job.

6. Vide order dated 20.7.2012, following issues were struck:

1. Whether the action of the respondents not to re-engage the petitioner after 01-09-2006 is illegal and unjustified? . . . OPP.
2. Whether no relationship of employer and employee/workman exists between the petitioner and the respondent No.1 as alleged. If so, its effect? . . . OPR
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? . . . OPR
4. Relief.
7. I have heard the ld. counsel/AR for the petitioner and have gone through the case file.
8. At this stage, I will like to highlight that since the respondent No.1 absented from the Court on 10.10.2012, he was ordered to be heard exparte.
9. For the reasons detailed here under, my findings on the above issues are as follows:-
 Issue No. 1 : Yes
 Issue No. 2 : No
 Issue No. 3 : Not pressed
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

10. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.
11. The petitioner Shri Ramu Baskey stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.
12. No evidence has been adduced by the respondent No.1.
13. The deposition made by the petitioner (PW1) goes un-rebutted and unchallenged on the record. The act of the respondent No.1 not to re-engage the petitioner (workman) after 01.9.2006 when the Company restarted the work amounts to retrenchment. The testimony of PW1 goes to show that the respondents have flouted the provisions of Sections 25-F, 25-G and 25-H of the Act.
14. As already mentioned no evidence has been led by the respondent No.1. The plea of abandonment put forth by him is not established.
15. On 03.6.2010 below given order was passed by my ld. Predecessor:-
 “3.6.2010 Present: Sh. Gaurav Sharma, adv. for the petitioner
 Sh. Vijay Pandit, adv. for the respondent 1
 None for the respondent 2

On the last date the petitioner was directed to be present. He is present in person today. The petitioner has in unequivocal terms expressed his inability to work with the respondent Hindustan

Construction Company Ltd. In fact 143 references had been received from the appropriate Government in respect to the termination of workmen by the Hindustan Construction Company Ltd. The aforesaid references are pending for adjudication since 15.5.2008. It transpires from the record that the address of all the workmen in the references is Prem Niwas, Upper Julakari, Chamba, District Chamba, H.P. Even the respondent no.2 was not being served during the said interregnum. Dasti summons were issued to the petitioners, but the ld. counsel could not get the same served as none was forthcoming in pursuance to his communications addressed to the petitioners. On 30.4.2010 again dasti summons were supplied to the ld. counsel for the petitioner and even the petitioners were directed to remain present today.

As sequel thereto only six workmen have put in appearance before this Court today one being the present petitioner. All the six have refused to join the respondent company. They claim that certain dues are payable to them by the respondent Company.

The reference is limited to the question of termination alone and obviously consequential benefits accruing thereto. The statement of claim on record is only confined to the violation of the provisions of Section 25-F of the Act and as such the dues payable will also be as envisaged by the said provisions of law. Since the petitioners have expressed their unwillingness to join the company, the respondent is directed to produce entire details vis-à-vis their appointment and remuneration being paid by them till their termination/abandonment. List the matter on 5.8.2010 at Chamba.

Sd/-
(KR. CHIRAG BHANU SINGH)
Presiding Judge
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

16. In view of the above quoted order passed by the Court, I have at a loss to understand to how it lies in the respondent No.1 to say that no relationship of employer and employee exists between him and his adversary.

17. Such being the situation, I have no hesitation to conclude that the action of the respondent No.1 not to re-engage the petitioner after 01.9.2006 is illegal and unjustified.

18. These issues are decided in favour of the petitioner and against the contesting respondent No.1.

19. While testifying in the Court as PW1, the petitioner has given his age as 27 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he was not gainfully employed. Otherwise also, the order dated 03.6.2010 reveals that the petitioner had expressed his inability to work with the respondent/Company. For these reasons, he is not entitled to the back wages.

Issue No. 3

20. Not pressed.

Relief (Issue No. 4)

21. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent No.1 is directed to reengage the petitioner forthwith. He shall not be entitled to the seniority and continuity in service and back wages in view of the aforesaid reasons and the order dated 03.6.2010 passed by this Court. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 18/2011

Date of Institution : 31.3.2011

Date of Decision : 10.12.2012

1. Shri Tek Singh s/o Shri Devi Ram, r/o Village Kathoun, P.O. Chehani, Tehsil Banjar, Distt. Kullu, H.P.

2. Shri Dhal Singh s/o Shri Tikam Ram, r/o Village Dharu, P.O. Manglour, Tehsil Banjar, Distt. Kullu, H.P.

3. Shri Sangat Ram s/o Shri Mine Ram, r/o Village Kanecili, P.O. Palach, Tehsil Banjar, Distt. Kullu, H.P.

4. Shri Tek Ram s/o Shri Khub Ram, r/o Village & P.O. Chehani, Tehsil Banjar, Distt. Kullu, H.P.

5. Shri Bhola Ram s/o Dalu r/o Village Dhar, P.O. Chehani, Tehsil Banjar, Distt. Kullu, H.P.

6. Shri Gumat Ram s/o Shri Beli Ram, r/o Village & P.O. Banjar, Tehsil Banjar, Distt. Kullu, H.P.

7. Shri Hira Singh s/o Shri Dhani Ram r/o Village Sharogi, P.O. & Tehsil Banjar, Distt. Kullu, H.P.

8. Shri Karam Singh s/o Shri Nirat Ram, r/o Village Sharai, P.O. Maglour, Tehsil Banjar, Distt. Kullu, H.P.

9. Shri Chape Ram s/o Sh. Mansukh r/o Village Shorogi, P.O. Banjar, Tehsil Banjar, Distt. Kullu, H.P.

10. Shri Pyare Ram s/o Shri Beli Ram, r/o Village Bhumer, P.O. Banjar, Tehsil Banjar, Distt. Kullu, H.P.

11. Shri Kamlesh s/o Shri Chhape Ram, r/o Village Sharogi, P.O. Banjar, Tehsil Banjar, Distt. Kullu, H.P.

12. Shri Surat Ram s/o Shri Dhagar, r/o Village Nagdhar, P.O. Bathiad, Tehsil Banjar, Distt. Kullu, H.P. . . *Petitioners.*

Versus

The Executive Engineer, HPPWD Division No.1, Kullu, H.P.

. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Sh. S.P. Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether demand notice dated 30.11.2008 raised by Sh. Tek Singh S/O Sh. Devi Ram & 11 other workmen as per Annexure-A (copy-enclosed) before The Executive Engineer, HPPWD Division No.1, Kullu, Distt. Kullu, H.P. regarding their regularization w.e.f. 2004 instead of January, 2007 is legal and justified? If yes, to what service benefits and relief the concerned workmen are entitled from the concerned employer? If not, what are its legal effects?”

2. The case of the petitioners (as set out in the statement of claim/demand) is that they are/were working as Beldars/Work Inspector on daily wage basis in HPPWD Sub Division, Banjar, District Kullu continuously since the year 1994. They have completed atleast 240 days of service in each and every calendar year of their engagement. The respondent/department has regularized their services vide orders dated 11.01.2007 and 27.01.2007 despite the fact that they had completed eight years or more service on 31.3.2004. The Government of Himachal Pradesh pursuant to the decision of the Hon'ble Apex Court in the case titled as Mool Raj Upadhyaya vs. State of H.P., 1994 SCALE (2) 630, has decided and regularized the services of its daily waged workers working in various departments on completion of 10 years of service. Presently the Himachal Pradesh Government has directed all its departments to regularize the services of the daily wagers on completion of eight years of service as a welfare measure on the demand of the workers. They (petitioners) had already completed more than 10 years of service before the dates of their regularization. Their services are/were required to be regularized on completion of 10 years of service as per the observations made in Mool Raj Upadhyaya's case in the year 2004 instead of the year 2007. They are entitled to the regularization and work charge status including arrears of wages as per the decision of the Himachal Pradesh Government after completion of eight years of service and if the same is not possible, after the completion of 10 years of daily wage service.

As such, as is apparent from the prayer clause of the statement of claim/petition, the petitioners have claimed the following relief(s) in this case:-

“the respondent be directed to regularize the services of the applicants and to give them work charge status including arrears of wages w.e.f. 2004 as per decision of H.P. Govt./Hon’ble Supreme Court of India. And/or any other relief to which the applicants are found entitled to under the facts and circumstances of the case, may also be awarded and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioners has been infringed. The petitioners/claimants have no cause of action. No dispute under the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) exists between the parties. The petitioners being the regular Class-III and Class-IV government servants from the year 2007 are governed by the statutory rules framed under the constitution. The present industrial dispute was raised in the year 2008 after the petitioners joined as regular public servants. The dispute is purely service matter under the statutory service rules. This Court has no jurisdiction to entertain and decide the petition. The claim petition is bad on account of delay and laches on the part of the petitioners.

On merits, paras 2 to 7 of the reply read thus:-

“2. That in reply to Para -2 of the claim petition it is submitted that the engagement of the claimant as daily waged work Inspector in the case of Tek Singh S/O sh. Devi Ram and daily waged Beldars in case of other claimants, in the office of respondent is not disputed. However, the detailed Mandays for each of the claimants including their date of engagement and regularization are being placed as Annexure R-1.

3. That contents of Para-III of the claim petition are admitted to the extent of regularization of the claimants. However they have been regularized as per the prevailing policy of the State of H.P. for the regularization of its daily waged worker engaged/deployed in different department, as admissible in the case of claimants. The date of regularization in case of each of claimants is mentioned in Annexure-R-1 discussed above.

4. to 6. That in reply to Para No.4, 5 and 6 of the claim petition, it is submitted that the Law laid down by the Hon’ble Supreme Court in a case titled as Mool Raj Upadhyaya V/S State of H.P. and the policy for regularization of daily wage framed there under is not disputed. However the above Law as well as policy/scheme was only applicable to the employees, who had either completed 10 years continuous services as on 31.12.1993 or the employees who had rendered one or more year of service, but not completed 10 year of service as on 31.12.1993. This scheme also does not apply to those employees who had not completed even one year of service as on 31.12.1993. Thus in the case of claimants the Policy framed under Mool Raj Upadhyaya as contended by the claimants in their claim petition is not at all applicable as their, date of engagement is lateral to 31.12.1993. The Policy framed under the Mool Raj Upadhyaya was one time benefit given to the workman who had completed 10 year of service as on 31.12.1993. The above position has duly been clarified by Hon’ble H.P. High court in C.W.P. No. 718 of 2006 Gauri Dutt and others V/S State of H.P.

The case of claimants are governed with the subsequent policy/scheme framed in the year 2006 vide department of Personnel letter No. PER(AP)-C-B(2)-1/2006-Vol.II dated 9.6.2006. The date eligibility of continues service in the Policy framed in year 2006 was 1.3.2004. The Policy framed in 2006 provides with other condition the eight year of continuous service to be only an eligibility criteria the regularization shall be only from prospective effect that is after the date of order of regularization is issued after completion of codal formalities. Further the daily waged workers were to be regularized against vacant post or by creation of the post. Thus in the case of claimants except Sh. Tek Singh Work Inspector vide letter No.PWE-133-11/2006-ES-III/12909-30 Dated 4.12.2006, copy of which is being attached as annexure R-2 attached. The post for regularization as per prevailing policy of 2006 were created by State Govt. As such the claimants were regularized by the respondent office in the year 2007 after completion of codal formalities. In the case of Sh. Tek Singh Work-Inspector the post was created by the State Govt. vide order No. PWE-133-11/2006/ES-III/13448-13473 Dated 15.12.2006. copy of which is being attached as Annexure R-3, the orders of the regularization are being placed as Annexure-R 4 to R-15. The copy of policy dated 9.6.2006 is being placed annexure R-16.

Therefore keeping in view the above submissions the claimant had rightly been regularized as per the prevailing policy as applicable in their cases. The claimants being regular government servant are governed under service rules are also precluded from raising present dispute under The Industrial dispute act. The Hon'ble court has not jurisdiction to entertain and try the present dispute, which has been raised at a time when the claimant had stepped into the shoes of Public servants. The copy of demand notice dated 30.11.2008 is being annexed as Annexure R-15.

7. That the contents of this para are wrong and hence denied. A detailed reply has already been given in reply to para 4, 5 and 6 above. The claimants had rightly been regularized at the appropriate time as per the policy as applicable to their respective cases. Thus the claimants has no enforceable cause action against the replying respondent.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioners have reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 01.5.2012, following issues were struck:-

1. Whether the petitioner and others are entitled to the regularization of their services w.e.f. the year 2004 instead of January, 2007 as alleged? . . . OPP.
2. Whether the petitioner(s) have a cause of action? . . . OPP.
3. Whether the petition is not maintainable in the present form? . . . OPR.
4. Whether this Court has no jurisdiction to hear and decide the matter? . . . OPR.
5. Whether the petition is bad on account of delay and laches as alleged. If so, its effect? . . . OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Tek Singh (one of the petitioners) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that they are not entitled to the regularization (as claimed) as per the policy of the Government. He also denied that the services of no person junior to them have been regularized by the respondent/department and a phoney petition has been preferred.

10. Conversely, Shri Anil Sharma, Executive Engineer, HPPWD, Division No.1, Kullu (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that the services of the petitioners have not been regularized as per the policy of the Government on the due date(s).

11. Ex. RW1/A is the copy of the letter dated 15.12.2006 written by the Engineer-in-Chief, HPPWD, Shimla to all the Superintending Engineers regarding the regularization of daily waged Work Inspector.

12. Exts. RW1/B to M are the copies of the office orders issued by the respondent relating to the regularization of the petitioners on different dates.

13. Ex. RW1/N is the copy of the letter dated 9th June, 2006 written by the Secretary (Personnel) to the Government of Himachal Pradesh to the various officers and heads of departments regarding the regularization of the daily waged/contingent paid workers.

14. Ex. RW1/O is the copy of the demand notice dated 30.11.2008 served upon the respondent by the petitioners under Section 2-A of the Act.

15. Ex. RW1/P is the copy of the letter dated 04.12.2006 written by the Engineer-in-Chief, HPPWD, Shimla to all the Superintending Engineers regarding the regularization of daily wagers.

16. Ex. RW1/Q is the mandays chart pertaining to the petitioners.

17. Relying upon Mool Raj Upadhyaya vs. State of Himachal Pradesh (cited supra) and State of Himachal Pradesh and others vs. Gehar Singh, 2007, (113) FLR 434 (SC), the ld. counsel for the petitioners argued that the services of his clients are required to be regularized on completion of 8-10 years of service in the year 2004 and not in the year 2007 as has been done by the respondent.

On the other hand, ld. Dy. D.A. for the respondent urged that since the petitioners did not fulfill the criteria of regularization as laid down in the above quoted rulings, their services have been rightly regularized as per the policy of the Government (Ex. RW1/N) as and when the post(s) fell vacant.

18. To my mind, the contention of the ld. Dy. D.A. holds the force and is sustainable. Mool Raj Upadhyaya's case and Gehar Singh's case deal with those daily wagers who were in employment on December 31, 1993. Admittedly, the petitioners/claimants joined the respondent/department thereafter. Therefore, the catena of law laid down in these rulings in no way helps the petitioners.

19. The evidence available on the record makes it crystal clear that the services of the petitioners were regularized as per the prevailing policy of the Government. They joined without any protest. That being so, I am at a loss to understand as to how and on what basis the petitioners are canvassing that their services have not been regularized on due date(s) by the respondent. The petitioners have not divulged the name of any person junior to them whose services have been regularized by the respondent earlier to them. They (petitioners) have no cause of action and are not entitled to any relief.

20. These issues are decided against the petitioners and in favour of the respondent.

Issue No. 3

21. Taking into account my findings on the issues No.1 and 2 above, it is held that the instant claim petition is not maintainable in the present form.

22. This issue is also decided against the petitioners and in favour of the respondent.

Issues No. 4 & 5

23. Not pressed.

Relief (Issue No. 6)

24. As a sequel to my findings on the various issues, the present claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of December, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT MANDI)**

Ref: No. : 268/2012

Sh. Rajinder Singh, President, Zila Van Mazdoor Sangthan, Head Office, Mohal, Distt. Kullu, H.P. . . *Petitioner.*

Versus

1. he Principal Chief Conservator of Forest, Talland Shimla, H.P.
2. The Conservator of Forest, National Park Shimshi, Distt. Kullu, H.P.

. . *Respondents.*

04-10-2012 Present : Petitioner in person.
Sh. Sanjeev Katoch, Dy.D.A. for the respondents.

In view of the separate statement made by the petitioner, this reference is dismissed as withdrawn. Parties to bear their own costs.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

Be consigned to the Record Room after its due completion.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 104/2008

Sh. Vijay Bahadur s/o Sh. Giri Bahadur c/o CITU Office, Prem Niwas, Upper Julakri, Chamba, District Chamba, H.P. . . *Petitioner.*

Versus

1. The Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P.

2. Sh. Karan Salaria, Sub Contractor c/o Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. . . Respondents.

10-10-2012 Present: Sh. D.P. Malhotra, Adv., csl. for the petitioner.
None for the respondent No. 1.

The name of the respondent No.2 (Sh. Karan Salaria) has already been ordered to be deleted from the array of the respondents per order dated 15-05-2012.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the respondent No.1. He and his ld. csl. are absent despite knowledge. It is already 2.30 P.M. Thus, the respondent No.1 is proceeded against exparte.

2. The petitioner/claimant (Sh. Vijay Bahadur) has not come present. No PW is present despite the grant of 3rd and last opportunity in this old case pertaining to the year 2008. The perusal of the file discloses that the issues in this case were framed on 20-07-2012 and thereafter three opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner more time to lead the evidence. His evidence is accordingly closed by the order of the Court.

3. Since the petitioner has failed to lead any evidence in support of his claim, I have no hesitation to conclude that he is not entitled to any relief. The action of the respondents not to reengage the petitioner after 01-09-2006 is legal and justified. Parties to bear their own costs. The claim petitioner is dismissed.

4. The reference is answered in the aforesaid terms.

5. A copy of this order /Award be sent to the appropriate Government for further necessary action at its end.

6. Be consigned to the Records after due completion.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 123/2008

Sh. Suprean Tirki s/o Sh. Ignain Tirki c/o CITU Office, Prem Niwas, Upper Julakri,
Chamba, District Chamba, H.P. . . Petitioner.

Versus

1. The Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P.

2. Sh. Ashok Chouhan, Sub Contractor c/o Project Manager, Hindustan Construction Company Limited, Village Kalsui, P.O. Janghi via Mehla, District Chamba, H.P. . . *Respondents.*

10-10-2012 Present: Sh. D.P. Malhotra, Adv., csl. for the petitioner.

None for the respondent No. 1.

The name of the respondent No.2 (Sh. Ashok Chouhan) has already been ordered to be deleted from the array of the respondents per order dated 15-05-2012.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the respondent No.1. He and his ld. csl. are absent despite knowledge. It is already 2.30 P.M. Thus, the respondent No.1 is proceeded against exparte.

2. The petitioner/claimant (Sh. Suprean Tirki) has not come present. No PW is present despite the grant of 3rd and last opportunity in this old case pertaining to the year 2008. The perusal of the file discloses that the issues in this case were framed on 20-07-2012 and thereafter three opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PW. In these circumstances, I am not inclined to grant the petitioner more time to lead the evidence. His evidence is accordingly closed by the order of the Court.

3. Since the petitioner has failed to lead any evidence in support of his claim, I have no hesitation to conclude that he is not entitled to any relief. The action of the respondents not to reengage the petitioner after 01-09-2006 is legal and justified. Parties to bear their own costs. The claim petition is dismissed.

4. The reference is answered in the aforesaid terms.

5. A copy of this order /Award be sent to the appropriate Government for further necessary action at its end.

6. Be consigned to the Records after due completion.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 236/2012

Sh. Madan Lal s/o Sh. Dugal Ram, r/o Village Naroli, P.O. Bachhway, Tehsil Thural, District Kangra, H.P. at present resident of Village Gandhi Nagar, Kullu, Tehsil and District Kullu, H.P. . . *Petitioner.*

Versus

The Occupier/Factory Manager, M/s Puri Brothers, Puri Oil Mills, Gandhi Nagar, Kullu, Tehsil and District Kullu, H.P. . . Respondent.

11-10-2012 Present: Petitioner with Sh. Vijay Kaundal, Adv.
Sh. Ramesh Chander, A.R. for the respondent.

Rejoinder not filed. The parties have compromised. Statements recorded separately. The same are reproduced below verbatim for ready reference:

“ ब्यान श्री रमेश चन्द A.R वास्ते प्रतिवादी

On. S.A
11-10-2012

वादी हमारा कर्मचारी है इसे हमने आज तक नौकरी से न निकाला है । वादी ने खुद ही काम पर आना छोड़ दिया जब उसे डमटाल से बहादुरगढ़ (हरियाणा) को स्थानांतरित किया गया । अगर वादी दोबारा नौकरी Join करना चाहता है तो प्रतिवादी को कोई इतराज न है । यह Management की मर्जी होगी कि वह वादी को कहां पर नौकरी में रखने के बाद स्थानांतरित करती है या डमटाल में रखती है ।

R O & AC

P.J.
11-10-2012

ब्यान वादी श्री मदन लाल आयु 45 वर्ष

On. S.A
11-10-2012

उपरोक्त ब्यान श्री रमेश चन्द, A.R. सुन लिया है । इससे सहमत हूं । मैं प्रतिवादी के पास नौकरी बहादुरगढ़ (हरियाणा) में 22.10.2012 को सुबह 9 बजे Join कर लूंगा । Join करने के बाद मैं अपनी घरेलू परिस्थितियों के कारण Management को अपने स्थानांतरण के लिए आवेदन पत्र दे दूंगा जिसे Management decide करेगी । यह claim petition न चलाना चाहता हूं । समझौता हो गया है । इसलिए claim petition दाखिल दफ्तर की जावे । मैं जिस दिन से काम पर न गया से लेकर 21.10.2012 तक के वेतन का हकदार न हूंगा ।

R O & AC

P.J.
11-10-2012”

2. The claim petition is accordingly dismissed as withdrawn/compromised. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this order /Award be sent to the appropriate Government for further necessary action at its end.

5. File after due completion be consigned to the Records.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 106/2011

Sh. Ramesh Chaudhary s/o Sh. Mehar Chand, r/o Village Sohri, P.O. Jol-Sappar, Tehsil Nadaun, Distt. Hamirpur, H.P. . . *Petitioner.*

Versus

1. Distt. Incharge, Danik Jagran Prakashan Ltd., Sub Office Hamirpur, H.P.
2. Manager (Administration), Jagran Prakashan Ltd. H.O. Banoi, Tehsil Shahpur, Distt. Kangra, H.P. . . *Respondents.*

16-10-2012 Present: Petitioner with Sh. Umesh Nath Dhiman, Adv.
Sh. Rahul Mittal, Manager Administration (respondent No.2) in person.

The case is listed for the evidence of the respondents today, but in view of the separate statement made by the claimant/petitioner, the claim petition is dismissed as withdrawn. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.
3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
4. Be consigned to the Record Room after its due completion.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT BILASPUR)**

Ref: No. : 85/2012

Sh. Vinod Kumar s/o Sh. Amba Dutt, r/o Village Naghiar, P.O. Talai, Tehsil Jhandutta, Distt. Bilaspur, H.P. . . *Petitioner.*

Versus

1. The SDM (Ghumarwin)-cum-Chairman Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P.
2. The Incharge, Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P. . . *Respondents.*

19-10-2012 Present: Sh. Parveen Kumar Sharma, Adv., csl. for the petitioner.
Sh. Dhyan Singh, Temple Incharge, for the respondents with Sh. S.S.Kaushal, D.A., Bilaspur.

The case is listed for the evidence of the petitioner today, but the parties have compromised. Ex. CX i.e. the copy of the letter/compromise placed on the file. Statement of the ld. csl. for the claimant/petitioner recorded separately. Keeping in view the same, this claim petition is dismissed as withdrawn/compromised. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.
3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
4. File after due completion be consigned to the Records.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT BILASPUR)

Ref: No. : 86/2012

Sh. Sanjay Kumar s/o Sh. Ram Chandar, V.P.O. Talai, Distt. Bilaspur, H.P. . . *Petitioner.*
Versus

1. The SDM (Ghumarwin)-cum-Chairman Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P.
2. The Incharge, Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P.
.. *Respondents.*

19-10-2012 Present : Sh. Parveen Kumar Sharma, Adv., csl. for the petitioner.
Sh. Dhyan Singh, Temple Incharge, for the respondents with
Sh. S.S.Kaushal, D.A., Bilaspur.

The case is listed for the evidence of the petitioner today, but the parties have compromised. Ex. CX i.e. the copy of the letter/compromise placed on the file. Statement of the ld. csl. for the claimant/petitioner recorded separately. Keeping in view the same, this claim petition is dismissed as withdrawn/compromised. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.
3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. File after due completion be consigned to the Records.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT BILASPUR)**

Ref: No. : 87/2012

Sh. Raj Kumar s/o Sh. Hans Raj, V.P.O. Talai, Distt. Bilaspur, H.P. . . *Petitioner.*

Versus

1. The SDM (Ghumarwin)-cum-Chairman Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P.

2. The Incharge, Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P. . . *Respondents.*

19-10-2012 Present: Sh. Parveen Kumar Sharma, Adv., csl. for the petitioner.
Sh. Dhyan Singh, Temple Incharge, for the respondents with
Sh. S.S.Kaushal, D.A., Bilaspur.

The case is listed for the evidence of the petitioner today, but the parties have compromised. Ex. CX i.e. the copy of the letter/compromise placed on the file. Statement of the ld. csl. for the claimant/petitioner recorded separately. Keeping in view the same, this claim petition is dismissed as withdrawn/compromised. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. File after due completion be consigned to the Records.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT BILASPUR)

Ref: No. : 90/2012

Sh. Rajinder Kumar s/o Sh. Jagarnath, Village-Jhabola, P.O. Talai, Distt. Bilaspur, H.P.
. . Petitioner.

Versus

1. The SDM (Ghumarwin)-cum-Chairman Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P.
2. The Incharge, Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P.
. . Respondents.

19-10-2012 Present: Sh. Parveen Kumar Sharma, Adv., csl. for the petitioner.
 Sh. Dhyan Singh, Temple Incharge, for the respondents with
 Sh. S.S.Kaushal, D.A., Bilaspur.

The case is listed for the evidence of the petitioner today, but the parties have compromised. Ex. CX i.e. the copy of the letter/compromise placed on the file. Statement of the ld. csl. for the claimant/petitioner recorded separately. Keeping in view the same, this claim petition is dismissed as withdrawn/compromised. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.
3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
4. File after due completion be consigned to the Records.

Announced:

By order,
 RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT BILASPUR)

Ref: No. : 92/2012

Sh. Lal Singh s/o Late Sh. Hari Ram, V. P.O. Talai, Distt. Bilaspur, H.P. *. . Petitioner.*

Versus

1. The SDM (Ghumarwin)-cum-Chairman Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P.
2. The Incharge, Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P.
. . Respondents.

19-10-2012 Present : Sh. Parveen Kumar Sharma, Adv., csl. for the petitioner.
Sh. Dhyan Singh, Temple Incharge, for the respondents with
Sh. S.S.Kaushal, D.A., Bilaspur.

The case is listed for the evidence of the petitioner today, but the parties have compromised. Ex. CX i.e. the copy of the letter/compromise placed on the file. Statement of the ld. csl. for the claimant/petitioner recorded separately. Keeping in view the same, this claim petition is dismissed as withdrawn/compromised. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.
3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
4. File after due completion be consigned to the Records.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT BILASPUR)

Ref: No. : 93/2012

Sh. Sanjay Kumar s/o Sh. Roshan Lal, V.P.O. Talai, Distt. Bilaspur, H.P. . . *Petitioner.*

Versus

1. The SDM (Ghumarwin)-cum-Chairman Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P.
2. The Incharge, Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P.
.. *Respondents.*

19-10-2012 Present: Sh. Parveen Kumar Sharma, Adv., csl. for the petitioner.
Sh. Dhyan Singh, Temple Incharge, for the respondents with
Sh. S.S.Kaushal, D.A., Bilaspur.

The case is listed for the evidence of the petitioner today, but the parties have compromised. Ex. CX i.e. the copy of the letter/compromise placed on the file. Statement of the ld. csl. for the claimant/petitioner recorded separately. Keeping in view the same, this claim petition is dismissed as withdrawn/compromised. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.
3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. File after due completion be consigned to the Records.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT BILASPUR)

Ref: No. : 94/2012

Sh. Surinder Kumar s/o Sh. Dev Raj, V. P.O. Talai, Distt. Bilaspur, H.P. . . *Petitioner.*

Versus

1. The SDM (Ghumarwin)-cum-Chairman Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P.

2. The Incharge, Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P. . . *Respondents.*

19-10-2012 Present: Sh. Parveen Kumar Sharma, Adv., csl. for the petitioner.
Sh. Dhyan Singh, Temple Incharge, for the respondents with
Sh. S.S.Kaushal, D.A., Bilaspur.

The case is listed for the evidence of the petitioner today, but the parties have compromised. Ex. CX i.e. the copy of the letter/compromise placed on the file. Statement of the ld. csl. for the claimant/petitioner recorded separately. Keeping in view the same, this claim petition is dismissed as withdrawn/compromised. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. File after due completion be consigned to the Records.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT BILASPUR)

Ref: No. : 95/2012

Sh. Sanjay Kumar s/o Late Sh. Anant Ram, V.P.O. Talai, Distt. Bilaspur, H.P.

. . *Petitioner.*

Versus

1. The SDM (Ghumarwin)-cum-Chairman Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P.

2. he Incharge, Baba Balak Nath Temple Trust, Talai, Distt. Bilaspur, H.P.

. . *Respondents.*

19-10-2012 Present: Sh. Parveen Kumar Sharma, Adv., csl. for the petitioner.
Sh. Dhyan Singh, Temple Incharge, for the respondents with
Sh. S.S.Kaushal, D.A., Bilaspur.

The case is listed for the evidence of the petitioner today, but the parties have compromised. Ex. CX i.e. the copy of the letter/compromise placed on the file. Statement of the Id. csl. for the claimant/petitioner recorded separately. Keeping in view the same, this claim petition is dismissed as withdrawn/compromised. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. File after due completion be consigned to the Records.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 278/2010

General Secretary, Himachal Pradesh Nirman Kamgar Sangh, Ikai Baner Jal Vidyut Pariyojna, Charan-III, r/o V.P.O. Jia, Tehsil Palampur, Distt. Kangra, H.P.

. . *Petitioner.*

Versus

The General Manager, (Small Hydro Project Kangra, HP) Lanco Infratech Limited, Plot No. 279, Phase-I, Udyog Vihar, Gurgaon Haryana-122016 c/o Retd. B.D. Sharma Niwas Shyam Nagar, Dharamshala, Tehsil Dharamshala, Distt. Kangra, H.P.

. . *Respondent.*

02-11-2012 Present: Sh. Rajesh Kumar, President of the petitioner Sangh in person.
Sh. Anuj Sony, Adv. vice csl. for the respondent.

Reply to the application for addition of the necessary parties filed by the respondent/non-applicant.

At this stage, keeping in view of the separate statement made by Sh. Rajesh Kumar, the President of the petitioner Sang, this claim petition is dismissed as withdrawn. Parties to bear their own costs.

The reference is answered in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

Be consigned to the Record Room after its due completion.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT MANDI)**

Ref: No. : 95/2010

Sh. Jitender Thakur s/o Shri Khimi Ram, r/o Village & P.O. Poueed, Tehsil & District
Kullu, H.P. . . *Petitioner.*

Versus

President/Chairman, The Kullu Sadar Fruit Vegetable Growers Subzi Mandi, Akhara
Bazaar, Kullu, Distt. Kullu, H.P. . . *Respondent.*

06-11-2012 Present: None.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the parties. The petitioner/claimant and his ld. csl. are absent despite knowledge. Even no RW is present. It is already 3.30 P.M. This indicates that the petitioner is not interested to pursue the matter. He is accordingly not entitled to any relief. The termination of the services of the petitioner by the respondent is thus proper and justified. The claim petition is dismissed. Parties to bear their own costs.

The reference is answered in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

Be consigned to the Records after due completion.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 126/2011

Sh. Jasveer Kumar s/o Sh. Surender Nath, r/o V.P.O. Raipur Sohad, Tehsil & Distt. Una,
H.P. . . *Petitioner.*

Versus

The Factory Manager, M/s Rangar Breweries Ltd. Plot No.1 & 130 Industrial Area,
Mehatpur, Distt. Una, H.P. . . *Respondent.*

27-11-2012 Present: Sh. S.S. Sippy, A.R. for the petitioner.
Sh. Anubhav Walia, Adv., csl. for the respondent.

The parties have compromised. Statement of the Id. A.R. for the claimant/petitioner recorded separately. Keeping in view the same, the instant claim petition is dismissed as withdrawn/compromised. Parties to bear their own costs.

The reference is answered in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

File after due completion be consigned to the Records.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref: No. : 310/2012

Sh. Sohan Lal s/o Sh. Mast Ram, r/o Village and Post Office Upperthal, Tehsil Sunderbani, Distt. Rajauri (J&K). . . *Petitioner.*

Versus

The General Manager, M/s TRG Industries Private Limited, Worksite Joginder Nagar, Bharolu, P.O. Jalpehad, Tehsil Joginder Nagar, Distt. Mandi, H.P. . . *Respondent.*

01-12-2012 Present : None for the petitioner.
Sh. Ravinder Kumar, Clerk of the respondent/company, in person.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He is absent despite knowledge and being served through his mother. It is already 2.30 P.M. This indicates that the petitioner is not interested to pursue the matter. Accordingly, the action of the respondent in not taking the petitioner on duty at Worksite Joginder Nagar is held to be legal and justified. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.
3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
4. Be consigned to the Records after due completion.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.(CAMP AT MANDI)

Ref: No. : 269/2012

Sh. Kamal Dev s/o Sh. Peeru Ram, r/o Village Uba, P.O. Dewri, Tehsil Sadar, District Mandi, H.P. . . *Petitioner.*

Versus

1. The Managing Director, M/s Abir Infrastructure Pvt. Ltd., 143-144, Udyog Vihar, Phase-IV, Gurgaon, (Haryana).

2. The Project Manager, M/s Patikari Power Project Pvt. Ltd., Village Gurah, P.O. Barer, Tehsil Chachiot, District Mandi, H.P. . . Respondents.

05-12-2012 Present: Petitioner with Sh. K.S. Guleria, Adv.
Sh. Shyam Lal, Project Manager for the respondents with
Sh. Vikash Sharma, Adv.

Statement of claim/demand not filed. The parties have compromised. Statement of the petitioner/claimant recorded separately. Keeping in view the same, this reference//Industrial Dispute is dismissed as withdrawn/compromised. Parties to bear their own costs.

The reference is answered in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

Be consigned to the Records after due completion.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.(CAMP AT BILASPUR)

Ref: No. : 258/2010

Sh. Jaswinder Singh s/o Sardar Arjun Singh, r/o V.P.O. Gardley, Tehsil Anandpur Sahib, Distt. Ropar, Punjab. Through B.S. Verma, Vice President, INTUC, H.P. State Near Water Tank, Kosrian Sector, Distt. Bilaspur, H.P. . . Petitioner.

Versus

The General Manager, Suraj Fabrics Ltd. Phase-II, Industrial Area, Gwalthai, Tehsil Sh. Naina Deviji, Distt. Bilaspur, H.P. . . Respondent.

06-12-2012 Present: Sh. R.L. Bhardwaj, Adv., csl. for the petitioner.
Sh. Manoj Pillai, Adv. for the respondent.

No PW is present despite the grant of last opportunity. Previous costs of Rs. 1000/- not paid. The perusal of the file discloses that already three opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date neither any list of witnesses has been filed nor steps taken to summon the witnesses. In these circumstances, I am not inclined to grant the petitioner more time to lead the evidence. Accordingly, his evidence is closed by the order of the Court.

Since the petitioner has failed to adduce any evidence in support of his claim, I have no hesitation to conclude that he is not entitled to any relief. Consequently, the claim petition preferred by him is dismissed. The termination of the services of the petitioner by the respondent is held to be legal and justified. Parties to bear their own costs.

The reference is answered in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

Be consigned to the Records after due completion.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT BILASPUR)

Ref: No. : 35/2011

Sh. Ramesh Chand s/o Sh. Kishan Chand, Village-Luthan, P.O. Sudhgal, Tehsil Jawalamukhi, Distt. Kangra, H.P. . . *Petitioner.*

Versus

1. The Chairman-cum-Managing Director, H.P. Ex-Serviceman Corporation, Hamirpur, H.P.

2. The Project Manager, H.P. Ex-Servicemen Corporation, Barmana, Distt. Bilaspur, H.P. . . *Respondents.*

06-12-2012 Present: None for the petitioner.
Sh R.K. Handa, Adv., for the respondents.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He, his ld. csl. and A.R. are absent despite knowledge. It is already 2.30 P.M. Even no PW is present. The perusal of the file discloses that the petitioner, his ld. csl. and A.R. are not appearing in this case since long. In these circumstances, I have no hesitation to conclude that the petitioner is not interested to pursue the matter. Accordingly, he is not entitled to any relief. The claim petition preferred by him is dismissed. The termination of the services of the petitioner by the respondents is held to be legal and justified. Parties to bear their own costs.

The reference is answered in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

Be consigned to the Records after due completion.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT BILASPUR)**

Ref: No. : 34/2011

Sh. Manoj Kumar s/o Sh. Prakash Chand, V.P.O. Guga Saloh, Tehsil Palampur, Distt.
Kangra, H.P. . . *Petitioner.*

Versus

1. The Chairman-cum-Managing Director, H.P. Ex-Serviceman Corporation,
Hamirpur, H.P.

2. The Project Manager, H.P. Ex-Servicemen Corporation, Barmana, Distt. Bilaspur,
H.P. . . *Respondents.*

06-12-2012 Present: None for the petitioner.
Sh. R.K. Handa, Adv., for the respondents.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the claimant/petitioner. He, his ld. csl. and A.R. are absent despite knowledge. It is already 2.30 P.M. Even no PW is present. The perusal of the file discloses that the petitioner, his ld. csl. and A.R. are not appearing in this case since long. In these circumstances, I have no hesitation to conclude that the petitioner is not interested to pursue the matter. Accordingly, he is not entitled to any relief. The claim petition preferred by him is dismissed. The termination of the services of the petitioner by the respondents is held to be legal and justified. Parties to bear their own costs.

The reference is answered in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

Be consigned to the Records after due completion.

Announced:
(Rajan Gupta)

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 323/2012

Smt. Kanta Devi w/o Shri Bhikham Ram, r/o Village Rahnu, P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. . . *Respondent.*

12-12-2012 Present: Sh. Naval Kishore, Adv., vice csl. for the petitioner.
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

Ld. csl. for the petitioner prays for more time for filing of statement of claim/demand without assigning any reason despite the last opportunity afforded for today. The same is opposed by the other side. The perusal of the file discloses that the petitioner/claimant appeared in this Court through her ld. csl. on 26-09-2012 and thereafter three opportunities have been given to her for filing the statement of claim/demand which she has failed to do. In these circumstances, her right to file the statement of claim/demand is closed by the order of the Court. Consequently, it is held that she is not entitled to any relief. The termination of her services/ giving breaks in service to the petitioner by the respondent from time to time during the month of March, 1999 to 31-08-2007 is / was legal and justified. Parties to bear their own costs.

2. he reference is answered in the aforesaid terms.

3. A copy of this order /Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 325/2012

Smt. Nirmla Devi w/o Shri Kanshi Ram, r/o Village Sihan, P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P.

.. Respondent.

12-12-2012 Present: Sh. Naval Kishore, Adv., vice csl. for the petitioner.
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

Ld. csl. for the petitioner prays for more time for filing of statement of claim/demand without assigning any reason despite the last opportunity afforded for today. The same is opposed by the other side. The perusal of the file discloses that the petitioner/claimant appeared in this Court through her ld. csl. on 26-09-2012 and thereafter three opportunities have been given to her for filing the statement of claim/demand which she has failed to do. In these circumstances, her right to file the statement of claim/demand is closed by the order of the Court. Consequently, it is held that she is not entitled to any relief. The termination of her services/ giving breaks in service to the petitioner by the respondent from time to time during the month of August, 1998 to 31-08-2007 is / was legal and justified. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this order /Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 327/2012

Smt. Pawana Devi w/o Shri Roshan Lal, r/o Village and P.O. Sihla, Tehsil Joginder Nagar,
District Mandi, H.P. *.. Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P.

.. Respondent.

12-12-2012 Present: Sh. Naval Kishore, Adv., vice csl. for the petitioner.
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

Ld. csl. for the petitioner prays for more time for filing of statement of claim/demand without assigning any reason despite the last opportunity afforded for today. The same is opposed by the other side. The perusal of the file discloses that the petitioner/claimant appeared in this Court through her ld. csl. on 26-09-2012 and thereafter three opportunities have been given to her for filing the statement of claim/demand which she has failed to do. In these circumstances, her right to file the statement of claim/demand is closed by the order of the Court. Consequently, it is held that she is not entitled to any relief. The termination of her services/ giving breaks in service to the petitioner by the respondent from time to time during the month of Sept., 1999 to 31-08-2007 is / was legal and justified. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this order /Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 362/2012

Sh. Kishori Lal s/o Sh. Chuni Lal, r/o Village Sarohali, P.O. Chauntra, Tehsil Joginder
Nagar, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Joginder Nagar, Distt. Mandi, H.P. . . *Respondent.*

14-12-2012 Present: Petitioner with Sh. Vijay Kaundal, Adv.
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

Statement of claim /demand not filed by the petitioner/claimant. Keeping in view the
separate statement made by his ld. csl., this reference is dismissed as withdrawn. Parties to bear
their own costs.

The reference is answered in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary
action at its end.

File after due completion be consigned to the Records.

Announced:

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

ब अदालत कार्यकारी दण्डाधिकारी, मनाली, तहसील मनाली, जिला कुल्लू हिमाचल प्रदेश

श्री झोफा राम पुत्र स्व० श्री हिन्दलू राम, निवासी गांव बलसारी, डा० छियाल, तहसील मनाली, जिला
कुल्लू, हिमाचल प्रदेश।

बनाम

आम जनता

विषय.—दरखास्त बराए नाम की दरुस्ती करने बारे।

नोटिस बनाम आम जनता।

श्री झोफा राम पुत्र स्व० श्री हिन्दलू राम, निवासी गांव बलसारी, डा० छियाल, तहसील मनाली, जिला कुल्लू, हिमाचल प्रदेश ने इस न्यायालय में आवेदन-पत्र मय शपथ-पत्र गुजारा है कि उसका नाम ग्राम पंचायत नसोगी में झोफा राम दर्ज है जोकि गलत है, जिसकी वह दुरुस्ती करवाना चाहता है व राजस्व कागजात में मस्त राम उर्फ झोफा राम दर्ज है। आवेदक ने ब्यान हल्फिया दिया है कि उसका नाम पंचायत में मस्त राम उर्फ झोफा राम दर्ज किया जाए। जिसे अब दर्ज करवाने के आदेश दिए जावें।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को मस्त राम उर्फ झोफा राम का नाम बदलने बारे आपत्ति हो तो वह दिनांक 13-2-2013 को या इससे पूर्व अदालत हजा में अपनी आपत्ति दर्ज करवा सकता है। इसके उपरान्त कोई भी उजर व एतराज समायत न होगा तथा नियमानुसार उक्त व्यक्ति का नाम बदलने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 11-1-2013 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/-
कार्यकारी दण्डाधिकारी,
मनाली, जिला कुल्लू, हिमाचल प्रदेश।

हिमाचल प्रदेश बारहवीं विधान सभा

अधिसूचना

शिमला-171004, 24 जनवरी, 2013

संख्या: वि०स०:-विधायन-शपथ/1-2/2013.- भारत के संविधान के अनुच्छेद 188 के अनुसरण में हिमाचल प्रदेश विधान सभा के लिए 52-दून निर्वाचन क्षेत्र से निर्वाचित सदस्य, श्री राम कुमार ने राज्यपाल, हिमाचल प्रदेश द्वारा इस प्रयोजन हेतु जारी अधिसूचना संख्या: जी०ए०डी० (पी ए) 4 (डी) -7/90, दिनांक 28 दिसम्बर, 2012 द्वारा नियुक्त अध्यक्ष, श्री बृज बिहारी लाल बुटेल के समक्ष दिनांक 24 जनवरी, 2013 को शपथ ग्रहण की।

बलबीर तेगटा, भा.प्र.से.
सचिव,
हि० प्र० विधान सभा।

HIMACHAL PRADESH TWELFTH VIDHAN SABHA SECRETARIAT

NOTIFICATION

Shimla, the 24th January, 2013

No. VS-Legn.-Oath/1-2-2013.—In pursuance of Article 188 of the Constitution of India, Shri Ram Kumar elected Member of the Himachal Pradesh Legislative Assembly from (52-Doon), before taking his seat, made and subscribed oath on the 24th January, 2013 before the Speaker, Shri Brij Behari Lal Butail, appointed in this behalf by the Governor vide Notification No.GAD (PA)-4(D)-7/90, dated 28th December, 2012.

Balbir Tegta, I.A.S.
Secretary,
H.P. Vidhan Sabha.